Supreme Court, U.S.
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No._____

In the Supreme Court of the United States

October Term, 1999

In re* CARL BERNOFSKY, *Petitioner

DR. CARL BERNOFSKY,
Plaintiff - Petitioner,
v.

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND (TULANE UNIVERSITY SCHOOL OF MEDICINE),
Defendant - Respondent.

Petition for Writ of Mandamus

CARL BERNOFSKY
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Petitioner, Pro Se

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QUESTION PRESENTED FOR REVIEW

Should United States District Court Judge for the Eastern District of Louisiana, the Honorable Ginger Berrigan, who is an adjunct faculty member of Tulane University and who served on the Board of Directors of a Tulane University Research Center, be disqualified from presiding in cases in which Tulane University is a defendant?

PARTIES

Dr. Carl Bernofsky
- Plaintiff - Petitioner

The Honorable Ginger Berrigan, Judge
United States District Court for the Eastern District of Louisiana
- Respondent

Victor R. Farrugia, Esq.
- Counsel for Plaintiff

Administrators of the Tulane Educational Fund
(Tulane University School of Medicine)
- Defendant - Respondent

Julie D. Livaudais, Esq.
- Counsel for Defendant

G. Phillip Shuler, III, Esq.
- Counsel for Defendant

Richard B. Ramirez, Esq.
- Counsel for Defendant

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PRIOR OPINIONS

The opinion whose review is sought is unpublished and is reproduced in the Appendix at A-9. The District Court opinion is reproduced in the Appendix at A-1.

JURISDICTION

Petitioner seeks this Court's review of the judgment entered on July 6, 1999 by the United States Circuit Court of Appeals for the Fifth Circuit, by a Petition for Writ of Mandamus pursuant to the jurisdiction conferred by 28 U.S.C. § 1651(a). This petition is timely filed because it was mailed within ninety days of July 6, 1999, the date a petition for mandamus was denied in the court below. Rules 13.1 and 29.2.

Jurisdictional basis for the Fifth Circuit is 28 U.S.C. § 1651(a) and Fed. R. App. P. 21(a), and for the District Court is 28 U.S.C. § 1331.

CONSTITUTIONAL PROVISIONS

Article V, United States Constitution in pertinent part provides:

> No person shall be deprived of life, liberty, or property, without due process of law.

Article XIV, Section 1, United States Constitution in pertinent part provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

Title 28, U.S.C., Section 455(a) states:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably by questioned.

Title 28, U.S.C., Section 455(b)(5)(i) in pertinent part states:

> He shall also disqualify himself . . . where he . . . is a party to the proceeding, or an officer, director or trustee of a party.

STATEMENT OF THE CASE

Procedural History

Petitioner, Dr. Carl Bernofsky, was plaintiff in a series of four lawsuits against defendant, Tulane University, in which the Honorable Ginger Berrigan presided. In the first lawsuit, Civil Action No. 95-358, filed Jan. 31, 1995 in United States District Court for the Eastern District of Louisiana, petitioner alleged discrimination under 42 U.S.C. § 1981 and joined various state law claims. The complaint asserted that petitioner was a professor at Tulane University Medical School where he had been a faculty member for 20 years and that a new Departmental Chairman, who arrived in Nov., 1991 had harassed him, interfered with his staff, hindered his performance, caused him to lose grant funding, and threatened termination. The complaint further alleged that these actions were based on the fact that petitioner was Jewish and that the other two senior Jewish faculty members in the Department were also being discriminated against on the basis of their Jewish parentage by the same Chairman, who was of Lebanese descent.

A First Amended Complaint, adding an age discrimination claim under state law, was filed Feb. 27, 1995. A trial date was initially set for Jan. 22, 1996, but was continued to July 8, 1996 because of petitioner's diagnosis and treatment for cancer. A Second Amended Complaint was filed on Nov. 21, 1995, adding an ADEA claim and a claim for conversion of laboratory equipment and materials.

Defendant filed a Motion for Summary Judgment on May 14, 1996, and a Reply Memorandum on May 31, 1996. Petitioner filed an Opposition Memorandum to Summary Judgment on May 21, 1996, and a Reply Memorandum Opposing Summary Judgment on June 5, 1996. In response to issues raised by the District Court, petitioner filed a Supplemental Memorandum Opposing Summary Judgment on July 1, 1996, a Memorandum in

Response to Court's Request, and a letter setting forth each of petitioner's claims, also in response to the District Court's directive. Defendant delivered a Pre-trial Memorandum on July 1, 1996, and petitioner responded on July 2, 1996.

A status conference was held July 5, 1996, at which time the District Court informed petitioner's counsel that defendant's motion for summary judgment would be denied and that the trial would commence as scheduled on July 8, 1996. However, as a result of defendant's complaints concerning the Exhibit Books assembled by petitioner, the parties agreed to continue the trial to the next available date which, after a series of scheduling conflicts, was set for Sept. 8, 1997. Although this trial date was reconfirmed as late as Apr. 2, 1997, the District Court nevertheless reversed itself, granting summary judgment in favor of defendant Apr. 15, 1997 and rendering final judgment Apr. 21, 1997.

Petitioner timely appealed, but the Fifth Circuit, in an unpublished opinion, affirmed the District Court for "substantially" the same reasons Jan. 8, 1998. The Appellate Court further denied petitioner's motion for a rehearing Feb. 5, 1998. Subsequently, as Case No. 97-1844, the U.S. Supreme Court denied a petition for *certiorari* Oct. 5, 1998.

Petitioner filed two other lawsuits, this time in State Court (Nos. 97-20805 and 98-6317). These were removed by defendant to Federal Court, where they were docketed as Civil Actions 98-2102 and 98-1577, respectively, and assigned to Judge Berrigan. A fourth lawsuit, Civil Action 98-1792, was filed directly in U.S. District Court on June 18, 1998. Civil Actions 98-1792 and 98-2102 were later consolidated under the former docket number and is currently pending, captioned as Dr. Carl Bernofsky v. Administrators of the Tulane Educational Fund. In this lawsuit, petitioner alleges retaliatory conduct by defendant for making false and malicious statements to prospective employers in

violation of 42 U.S.C. § 1981 and 1981(b), 42 U.S.C. § 2000e-3(a), and 29 U.S.C. § 623(d).

Because petitioner was unapprised of Judge Berrigan's association with defendant, he had been precluded from addressing the conflict of interest issue until the matter now pending before her. Petitioner filed a motion to recuse Judge Berrigan Oct. 15, 1998, and defendant filed a memorandum in opposition Nov. 9, 1998. Petitioner's motion to recuse was denied Nov. 23, 1998 (*Appendix*, at A-1), and the Judge's order was appealed. The Fifth Circuit denied the appeal Feb. 2, 1999 (*Appendix*, at A-2), and petitioner's legal counsel withdrew from the case Feb. 8, 1999. *Appendix*, at A-4.

Petitioner, in proper person, then filed a Complaint of Judicial Misconduct against Judge Berrigan based on her material and continuing association with defendant throughout the above proceedings and her inexcusable failure to disclose this association. The Complaint, No. 99-05-372-0118, was dismissed Feb. 23, 1999 by order of Fifth Circuit Chief Judge and, upon appeal, the Judicial Council of the Fifth Circuit affirmed the dismissal Apr. 19, 1999.

Petitioner, in proper person, next filed a Petition for Writ of Mandamus that sought to recuse Judge Berrigan from the litigation presently before her. Attached to the petition were 25 exhibits with documentation of all claims.

A status conference was called June 17, 1999 at which time Judge Berrigan informed all counsel of her decision to recuse herself. Subsequently, however, Judge Berrigan reversed herself and submitted a response that opposed recusal June 21, 1999. *Appendix*, at A-6. Defendant responded June 28, 1999, and the Fifth Circuit Court of Appeals denied the petition July 6, 1999. *Appendix*, at A-9. The instant petition for mandamus followed.

Facts

Introduction

In the employment discrimination matter that was the subject of petitioner's first lawsuit, the District Court Judge who rendered summary judgment in favor of defendant, Tulane University, was an adjunct faculty member of Tulane University's Law School during the time that case was before the Court. The Judge continues her adjunct professorship to the present day. The Judge was also on the Board of Directors of one of Tulane University's research centers during the period that she rendered summary judgment in favor of defendant. Under the Model Codes of Judicial Conduct, the Judge not only had an obligation to disclose her association with the defendant university, she had a duty to disqualify herself pursuant to 28 U.S.C. § 455(a) and § 455(b)(5)(i). From Jan. 31, 1995 onward, the District Court Judge continually violated statutes regulating disqualification in all four of petitioner's lawsuits where she presided and failed to make any disclosure.

Professorship

Federal District Court Judge Ginger Berrigan is Adjunct Associate Professor of Law at Tulane University and taught the course, *Trial Advocacy*, during the 1995-96 academic year. Since then, Judge Berrigan has maintained a professional association with Tulane through her continued participation in the Law School's Judicial Externship Program and as a substitute instructor for the course, *Federal Practice & Procedure: Trials*, taught by 77-year-old Adjunct Professor, Federal District Court Judge Charles Schwartz, Jr. Under ordinary circumstances, Judge Berrigan would be expected to carry on this course when Judge Schwartz retires from teaching.

Judge Berrigan's affinity for Tulane University may be surmised from her willingness to devote the time and effort needed to prepare lecture materials, travel to the university campus, and teach classes - all without financial compensation. Nevertheless, Judge Berrigan has defended her qualification to sit by stating that her teaching activities in Tulane's Law School involve no [financial] compensation. *Appendix*, at A-1. Generally, adjunct professors are not paid by Tulane for their service in academic programs. However, with a lifetime salary provided, monetary compensation would appear to be secondary to the prestige a federal judge may derive from a university professorship. Furthermore, interacting in a university setting with university officials and prominent jurists is a professional benefit that allows a judge to keep abreast of academic politics and current legal developments, and to maintain social contacts. Finally, participating in a teaching program, or acting as a mentor, may satisfy a judge's sense of professional duty, the discharge of which is deemed compensation enough.

Board Membership

In 1990, Judge Berrigan, then an attorney, was appointed to the Board of Directors of Tulane University's Amistad Research Center, a position she occupied until 1997.[1] Significantly, Judge Berrigan recently altered her curriculum vitae by deleting three years from the time she previously claimed to serve on the Board of Tulane's Amistad Research Center. Whereas her previous vitae showed membership through 1997, the altered vitae now shows board membership only through 1994.[2] This change creates a new record that indicates that Judge

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[1] *Almanac of the Federal Judiciary, **1997***, Vol. 1, 5th Circuit, p. 3.

[2] *Almanac of the Federal Judiciary, **1998***, Vol. 1, 5th Circuit, p. 3.

Berrigan did not serve as a director of a Tulane research center at any time from Jan. 31, 1995 onward, when she presided in petitioner's lawsuits against Tulane. The *Almanac of the Federal Judiciary*, which is updated twice annually, cites Judge Berrigan's continuing Board membership in Tulane's Amistad Research Center for 1995, 1996, and 1997. The alteration of her record in 1998 implies that Judge Berrigan recognized that there was something improper about her association with Tulane during the 1995 - 1997 period. Specifically, as a "Director" of one of defendant's research centers, she was automatically disqualified pursuant to U.S.C. 28 § 455(b)(5)(i). Judge Berrigan's adjunct professorship with Tulane University was also omitted from the *Almanac of the Federal Judiciary*, although she continues to serve in this capacity.

The Amistad Research Center occupies a complete wing of Tilton Memorial Hall on the campus of Tulane University. Tulane not only furnishes the Center with a rent-free physical site, it funded $200,000 in improvements and contributed $[illegible]00 in relocation costs. Tulane also provides a budget of about $63,200 in 1986 dollars, which is adjusted annually for inflation and used for unrestricted operating expenses. Two members of Amistad Center's Board of Directors are appointed by Tulane. Tulane also publically represents the Amistad Center as a "Tulane" center, Amistad's holdings are listed as part of Tulane's library system, and Amistad's Executive Director, Comptroller, and other key administrative personnel are entered in the Tulane Faculty and Staff Directory.

Judge Berrigan has defended her qualification to sit by inferring that the Amistad Research Center is an entity that is independent from Tulane. *Appendix*, at A-1. This statement ignores Tulane's investment in the Center, Tulane's annual budgeting for the Center, Tulane's appointments to the Center's Board of Directors, and Tulane's influence over the Center's key personnel. The facts demonstrate that the Amistad Center, as

other Tulane centers, is materially dependent on Tulane for its existence.

According to Tulane's 1995 Faculty Handbook and recent updates from Tulane's Web site on the Internet, the Amistad Research Center is one of more than two dozen such centers affiliated with the University. It is also among those Tulane entities that are registered as non-profit corporations. These include the Southern Institute for Education and Research, the Tulane Public Interest Law Foundation, the Louisiana Public Health Institute, and others. Like most other Tulane centers, institutes, foundations, and departments that derive funding from extramural sources, the Amistad Research Center is still materially dependent on Tulane. Some centers, such as the Tulane Regional Primate Research Center and the Center for Bioenvironmental Research, receive substantial government grants in addition to the support they obtain from Tulane. However, like the Amistad Research Center, they are still considered integral parts of the University.

Abuse of Judicial Discretion

Petitioner's due process and equal protection rights under the Fifth and Fourteenth Amendments were, and continue to be, severely abridged in his civil suits against Tulane University.

Judge Berrigans's failure to disclose her association with defendant deprived petitioner of the opportunity to bring this association to the attention of the Appellate and U.S. Supreme Courts. Had the District Court's strong appearance of impropriety been timely addressed, its impartiality might reasonably have been questioned and affected the outcome of the appellate process. Petitioner complained that newly-created, deceptive and untruthful statements were employed by Tulane during oral arguments before the Appellate Court. When these falsehoods were pointed out in a brief that requested a rehearing, the Appellate Court declined to rehear the case. Had the Appellate

Court been aware of the District Court's association with defendant and its willful concealment of this association, it may have been more inclined to examine those strongly disputed material facts. The U.S. Supreme Court may also have been more receptive to the petition for *certiorari* had it been apprised that the Judge was disqualified under 28 U.S.C. § 455(a) and § 455(b)(5)(i) at the time she made her rulings and entered judgment in favor of Tulane.

At every critical junction, Judge Berrigan's reasoning appeared to be guided along a path that led to defendant's goal of denying petitioner a trial on the merits of his case. In some instances, this process involved treating as "undisputed facts" facts that were sharply disputed by documentary evidence and petitioner's sworn testimony. An egregious example of the District Court's abuse of authority was its treatment of petitioner's grant funding in his first lawsuit against Tulane. Documentation had thoroughly substantiated that petitioner had received notice of a new $250,000 grant award from the Air Force 10 weeks before he was terminated. The grant was officially accepted by Tulane and not returned to the Air Force until eight months after petitioner was terminated. Nevertheless, defendant claimed that petitioner had no grant funds with which to support his research, leading Judge Berrigan to state, "...Bernofsky was not qualified because of his lack of extramural funding..." (Civil Action No. 95-358, Apr. 15, 1997, *Order and Reasons*, at 18) and, "...all undisputed facts support the simple explanation that Bernofsky was terminated for his inability to meet his salary needs..." *Id.* at 28. The Judge's ruling was interpreted as follows:

> Former research professor at medical school asserted race and age discrimination and state law claims in connection with denial of tenure and ultimate termination for **failure to obtain grant funding**. *Bernofsky v. Tulane University Medical School*, 962 F.Supp. 895 (E.D.La. 1997) at 895. (Bold emphasis added).

During the past four-and-one-half years, the District Court repeatedly dismissed documentary evidence and sworn testimony that sharply contradicted defendant's claims while crediting the defendant's positions and labeling them as "undisputed." Petitioner, a scientist untrained in law, was astonished that the Court would abandon objective reality to favor defendant's disputed claims, even when they were contradicted by defendant's own documents. Petitioner can cite numerous instances of this bias and lack of objectivity, but a full accounting is beyond the scope of this petition. These "judgments notwithstanding the evidence" suggested the existence of influence from an extrajudicial source and led petitioner to search for and ultimately discover the association that linked the District Court to the defendant.

Attempts at Intimidation

In her letter of June 21, 1999 to the Fifth Circuit Court of Appeals in response to petitioner's petition for mandamus, Judge Ginger Berrigan sought to divert attention from the core issue of disqualification by focusing on petitioner's efforts to locate representation following the withdrawal of his former counsel. She implied that there was something untoward in petitioner's attempt to recruit legal counsel through advertising. Petitioner's print ads, which appeared in the *ABA Journal*, *Louisiana Bar Journal*, and three other highly-regarded legal publications, neither mentioned Judge Berrigan nor contained critical remarks. Contrary to the Judge's assertion, petitioner placed no advertising on the Internet. *Appendix,* at A-6. Petitioner's personal Web site, for which he alone is responsible, contains reprints of selected court documents, other factual information, and commentary on matters related to his lawsuits against Tulane. The Web site is intended for attorneys and anyone else seeking information about petitioner's lawsuits and is constitutionally protected speech.

Petitioner's present counsel was retained solely to represent him in the matter now pending in District Court irrespective of presiding judge. Neither petitioner's counsel nor any other attorney assisted petitioner in his recent efforts to seek Judge Berrigan's recusal. Petitioner assumed full responsibility for pursuing recusal on a *pro se* basis after realizing that his retention of legal counsel was handicapped by attorneys' fears of retaliation for complaining about a judge in whose court they continue to practice. Similar fears contributed to the withdrawal of petitioner's former counsel following Judge Berrigan's initial refusal to disqualify herself. *Appendix*, at A-4.

Fear of reprisal is justifiable. After expressing her wish that the recusal issue "be laid to rest," Judge Berrigan reminded petitioner's counsel that he "had litigated several employment discrimination cases in [her] section of Court." This comment appears to be an attempt to intimidate petitioner's counsel with an implied threat of possible retaliation. *Appendix*, at A-7. Moreover, Judge Berrigan has directed her responses on this matter exclusively to petitioner's counsel, to the latter's chagrin, even though petitioner has been acting *pro se* on the recusal issue.

Argument

Relief Sought

Petitioner, Carl Bernofsky, plaintiff in Civil Action No. 98-1792 c/w 98-2102, captioned as Dr. Carl Bernofsky v. Administrators of the Tulane Educational Fund, respectfully moves this court, pursuant to the provisions of 28 U.S.C. § 1651, to grant a writ of mandamus directing the Honorable Ginger Berrigan, Judge of the United States District Court for the Eastern District of Louisiana, to vacate her order of Nov. 23, 1998 denying petitioner's motion for recusal (*Appendix*, at A-1) and disqualify herself from presiding in the above-named action now pending before her. Recusal is justified on ground that the Judge is disqualified under 28 U.S.C. § 455(a), and that she willfully concealed and later misrepresented her long-term relationship with defendant with which she continues to be materially associated. Judge Berrigan's continued participation in the matter now before her creates the strong appearance of impropriety for which relief through disqualification is warranted. This writ should issue because the District Court indisputably abused its discretion, and petitioner has failed to obtain relief in the Fifth Circuit through the appellate process.

Second, petitioner respectfully moves this court, pursuant to the provisions of 28 U.S.C. § 1651 and 28 U.S.C. § 2106, to direct the Honorable Ginger Berrigan, Judge of the United States District Court for the Eastern District of Louisiana, to vacate her judgment in the case designated as Civil Action No. 95-358 (*Bernofsky v. Tulane University Medical School*, 962 F.Supp. 895 (E.D.La. 1997), cert. denied, ___U.S.___, 119 S.Ct 48 (1998)), and disqualify herself from further adjudication of that case. Vacatur is justified on grounds that the Judge was disqualified under 28 U.S.C. § 455(a) and § 455(b)(5)(i) at the time she ruled and entered judgment in favor of defendant; that she willfully concealed and later misrepresented her long-term relationship

with defendant with which she continues to be materially associated; and that this concealment obstructed justice, abridged petitioner's due process rights under the Fifth and Fourteenth Amendments, and prevented petitioner from receiving a valid *de novo* review in appellate court, which was unaware of the strong appearance of impropriety in the court below.

Petitioner invokes Fifth Amendment protection because of its applicability to federal jurisdiction.

> [D]ue process under the Fifth Amendment, along with the other guarantees of the Bill of Rights, when applied by federal courts, does serve as the basic protection of the citizen against unjust federal action. Crain v. United States, 162 U.S. 625 (1896), 16 S.Ct. 952, 40 L.Ed. 1097. . . In such cases, there is neither an intervening state court system nor an intervening state constitution. It is, therefore, the Court's view that Fifth Amendment due process must be given an even broader connotation than Fourteenth Amendment due process. *United States v. Townsend*, 151 F.Supp. 378 (D.C.D.C. 1957), at 387.

Petitioner further prays that the above cases be reassigned to a judge who is not associated with defendant so that they may be tried on their merits in a manner that will promote public confidence in the integrity and fairness of the federal judicial system and provide to the litigants the blessing of equal justice under the law.

Appropriateness of Mandamus

It is well-settled that mandamus petition is the proper procedure for an appellate court to review a district judge for disqualification from a case in which his or her impartiality might reasonably be questioned.

> A judge's refusal to recuse himself in the face of a substantial challenge casts a shadow not only over the individual litigation but over the integrity of the federal judicial process as a whole. The shadow should be dispelled at the earliest possible opportunity by an authoritative judgment either upholding or rejecting the challenge. In recognition of this point we have been liberal in allowing the use of the extraordinary writ of mandamus to review orders denying motions to disqualify. *Union Carbide Corp. v. U.S. Cutting Service, Inc.*, 782 F.2d 710 (7th Cir. 1986), at 712. (References deleted).

Moreover, few situations are more appropriate for mandamus than a judge's wrongful refusal to disqualify himself.

> This court has long taken the position that there are 'few situations more appropriate for mandamus than a judge's clearly wrongful refusal to disqualify himself.' *In re International Business Machines Corp.*, 618 F.2d 923 (2nd Cir. 1980), at 926 citing *Rosen v. Sugarman*, 357 F.2d 794, 797 (2nd Cir. 1966).

Although mandamus may be opposed on the premise that it should not to be used as a substitute for appeal, petitioner contends that no party should be required to submit to a presiding judge who has a prejudicial bent of mind, expecting that there will be another opportunity for justice after final judgment has been rendered. Rather, mandamus should be viewed as a means of avoiding a needless and judicially inefficient ordeal.

> [D]ue process . . . [requires] that a judge who is otherwise qualified to preside at trial or other proceeding must be sufficiently neutral and free of disposition to be able to render a fair decision. **No person should be required to stand trial before a judge with a 'bent of mind.'** *Collins v. Dixie Transport, Inc.*, 543 So.2d 160

(1989), at 166 citing *Berger v. United States*, 255 U.S. 22, 33, 41 S.Ct. 230, 233, 65 L.Ed. 481 (1921); Wolfram, *Modern Legal Ethics* § 17.5.5 Independence and Neutrality, p. 989 (1986). (Bold emphasis added).

Obligation to Disclose

According to Shaman, *et al.*, and the case law cited to support his determination, "...it is the obligation of a judge to disclose all facts that might be grounds for disqualification."[3]

Further, Canon 3C of the Code of Judicial Conduct of the American Bar Association, which was codified with modifications as 28 U.S.C. § 455 and extensively reviewed by Abramson,[4] states, in part, "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned... ."

Under Canon 3 of the Code of Judicial Conduct, Judge Berrigan had a duty to disclose her association with Tulane before sitting in any case in which Tulane was a defendant. However, from Jan. 31, 1995 onward, Judge Berrigan continually violated this Code with respect to the petitioner's lawsuits against Tulane University when she sat and failed to make any disclosure. More significantly, as a member of the Board of Directors of a Tulane research center during the time she ruled and entered judgment in favor of Tulane, Judge Berrigan was specifically disqualified pursuant to U.S.C. 28 § 455(b)(5)(i).

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[3] *Judicial Conduct and Ethics*, 2 ed., Shaman, J.M., Lubet, S., Alfini, J.J.; Michie Law Pub., Charlottesville, VA (1995), p. 146.

[4] *Judicial Disqualification under Canon 3 of the Code of Judicial Conduct*, 2 ed., Abramson, L.W., American Judicature Soc., Chicago, IL (1992), pp. 1-48.

Judge Berrigan's actions infringed the ethical principle, elaborated by Shaman, *et al.* and supported by case law that, "It is not the duty of the parties to search out disqualifying facts about the judge . . . it is the judge's obligation to disclose all possibly disqualifying facts."[5]

Quoting Justice Scalia in *Liteky*:

> ...[T]wo paragraphs of the [most recent] revision [of § 455] brought into § 455 elements of general 'bias and prejudice' recusal that had previously been addressed only by § 144. Specifically, paragraph (b)(1) entirely duplicated the grounds of recusal set forth in § 144 ('bias or prejudice'), but (1) made them applicable to *all* justices, judges and magistrates (and not just district judges), and (2) **placed the obligation to identify the existence of those grounds upon the judge himself**, rather than requiring recusal only in response to a party affidavit. *Liteky v. U.S.*, 510 U.S. 540 (1994) at 548, 114 S.Ct. 1147, 127 L.Ed.2d 474. (Bold emphasis added).

Willful Misrepresentation

Judge Berrigan's failure to make any disclosure of her material and continuing association with defendant over the course of four-and-one-half years as Presiding Judge, coupled with the alteration of her curriculum vitae and omission of her adjunct professorship from the *Almanac of the Federal Judiciary*, constitutes a willful misrepresentation designed to thwart discovery of her association with defendant. When confronted with the evidence of these actions, Judge Berrigan declined to respond. Her silence is self-implicating. *Appendix*, at A-6. This violation of 28 U.S.C. § 455 goes beyond mere negligence or harmless error and suggests that Judge Berrigan has an interest in

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[5] Footnote 3, p. 146.

the outcome of the proceedings, perhaps derived from a sense of loyalty to the University. Nonetheless, the Judge's personal agenda should not be allowed to become an impediment to the cause of justice. Judge Berrigan's partisanship infringes on petitioner's Fifth and Fourteenth Amendment rights to due process and equal protection and should not be tolerated.

> [T]here are two predicates for a 'wilful violation' of a rule of judicial conduct established by [the Supreme Court of Oregon], each of which is necessary for there to be a wilful violation: (1) that the judge must intend 'to cause a result or take an action contrary to the applicable rule' of judicial conduct, and (2) that the judge must be 'aware' of circumstances that in fact make the rule applicable, whether or not the judge knows that he violates the rule. *In re Schenck*, 870 P.2d 185 (Or. 1994), at 193.

Once the facts of her association with defendant were discovered by petitioner and brought to her attention, Judge Berrigan responded, "There is no basis for the plaintiff's suggestion that [my] impartiality might reasonably be questioned by virtue of these . . . circumstances..." *Appendix*, at A-1.

Judge Berrigan's disregard of disclosure principles are aggravated by the fact that she attempted to conceal the extent of her association with defendant by altering her curriculum vitae to create the appearance that her membership on the board of defendant's research center ended before petitioner's first lawsuit was filed on Jan. 31, 1995. Willful violations of judicial conduct are especially serious. With reference to *Schenck*, Shaman, *et al.* wrote:

> [A] judge will be subject to discipline (as distinct from reversal on appeal) for incorrectly failing to disqualify himself only where the failure was willful. The test is an objective one, and therefore a willful failure to

disqualify may be present even though a judge states on the record that he does not believe disqualification is necessary. This approach has the advantage of requiring judges to look to an external standard in addition to their subjective feelings to decide if disqualification is necessary. It thus takes into account that **disqualification is required if there is an appearance of partiality to the reasonable observer, and it precludes a judge from avoiding recusal merely by avowing his or her impartiality.** *In re Schenck, Id.* at 189, 193-195 (Bold emphasis added).[6]

Judges as Professors

With regard to writing, lecturing, and teaching, Shaman, *et al.* concluded:

> . . . [J]udges' personal and professional services must be dignified (footnote deleted) and, of course, must denote respect for and compliance with the law, these being the same restrictions that apply to all of a judge's extra-judicial activities whether compensated or not.
>
> Teaching requires that judges adhere to the same guidelines as apply to occasional or ad hoc lecturing, and also that the judge be sensitive to the nature of the institution at which she teaches. **Thus judges should not sit in cases where the educational institution is a party.** (Footnote deleted, bold emphasis added).[7]

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[6] *Judicial Conduct and Ethics*, 2 ed., Shaman, J.M., Lubet, S., Alfini, J.J.; Michie Law Pub., Charlottesville, VA (1995), p. 97.

[7] *Ibid.*, pp. 240-241.

Prejudice in Favor of Defendant

At two critical junctures in petitioner's lawsuits against Tulane, one involving summary judgment (*supra*, at 2) and the other recusal, Judge Berrigan articulated decisions that she later reversed by rulings that favored defendant after "subsequent research." *Appendix*, at A-7. The collective evidence and questionable nature of the "subsequent research" leading to these reversals are consistent with the idea that Judge Berrigan relied upon knowledge acquired outside of the proceedings and displayed an unequivocal partiality that rendered fair judgment impossible.

The duties of Judge Berrigan's adjunct professorship periodically bring her into professional and social contact with Tulane employees, students, administrators, and other professors. Thus, there is no barrier to her private, non-judicial association with the University. Judge Berrigan's contact with defendant subjects her to the receipt of extrajudicial information that can include rumor and innuendo about petitioner. Judge Berrigan has admitted to receiving information about petitioner from unnamed "lawyers in town, although I have not sought them out myself." *Appendix*, at A-7.

> It is difficult to imagine a more serious incursion on fairness than to permit the representative of one of the parties to privately communicate his recommendations to the decision makers. *Camero v. United States*, 375 F.2d 777 (U.S. Claims 1967), at 781.

Animus Toward Petitioner

In a complaint of judicial misconduct and petition for writ of mandamus to the Fifth Circuit Court of Appeals, petitioner documented Judge Berrigan's activities that presumably would require her disqualification. In her response to the latter petition,

Judge Berrigan did not dispute any of the allegations raised against her. *Appendix,* at A-6.

Although petitioner exposed the Judge's partisanship and raised questions about her integrity, Judge Berrigan nevertheless claimed that she "... do[es] not harbor any ill will towards Dr. Bernofsky." *Appendix,* at A-7. Given the gravity of the charges brought against her, this claim has a disingenuous ring. More likely, Judge Berrigan's ability to render impartial judgment has been irrevocably injured by petitioner's criticism of her judicial conduct, the only purpose of which was to justify her recusal.

> The basic requirement of constitutional due process is a fair and impartial tribunal, whether at the hands of a court, an administrative agency or a government hearing officer. The Supreme Court has consistently enforced this basic procedural right and held that decision makers are constitutionally unacceptable in the following circumstances [including] . . . **where an adjudicator has been the target of personal abuse or criticism from the party before him**... *Valley et al. v. Rapides Parish School Board,* 118 F.3d 1047 (5th Cir. 1997), at 1052. (References deleted, bold emphasis added).

In a situation somewhat analogous to the case here under review, the Fifth Circuit vacated the sentence of defendant Avilez-Reyes and remanded his case to district court because defendant's attorney had participated in a judicial disciplinary proceeding a month earlier against the trial judge, who then erroneously failed to recuse himself.

> [W]e hold that Judge McBryde abused his discretion and reversibly erred by failing to recuse himself from the Avilez-Reyes' case. We conclude that a reasonable person, advised of all the circumstance of this case, would harbor doubts about Judge McBryde's

impartiality. *U.S. v. Avilez-Reyes* 160 F.3d 258 (5th Cir. 1998), at 259.

Prejudgment and Predisposition

In her response to petitioner's petition to the Fifth Circuit for mandamus, Judge Berrigan stated:

> [Dr. Bernofsky] has gone through some very difficult life transitions in recent years, some of which he genuinely perceives to [be] caused by the bias and fault of others, including myself. I regret that he continues to have that perception. *Appendix,* at A-7.

The Judge's condescending assessment of petitioner's psychological state of mind is subjective and prejudicial. More importantly, her implication that petitioner's difficulties *are not the "fault of others"* reveals that she has already formed an opinion in this matter, seven months before the scheduled trial date of January 18, 2000, and before the completion of discovery or the taking of a single deposition.

"[A]djudicative decisions . . . should be free of bias or prejudice. Thus an adjudicative decision maker should be disqualified if he or she has prejudged disputed adjudicative issues." *Valley et al. v. Rapides Parish School Board*, 118 F.3d 1047 (5th Cir. 1997), at 1053. Moreover, "Prejudgment as to the facts . . . or reason to believe such exists, if fairly supported, would, in the Court's view, satisfy Section 144." *Bradley v. School Board of City of Richmond, Virginia*, 324 F.Supp. 439 (E.D. Va. 1971), at 445.

The basic requirement of constitutional due process is a fair and impartial tribunal, and the Supreme Court has consistently enforced this basic procedural right.

> The problem of a procedural defect arises when decision makers have prejudged the facts to such an extent that their minds are 'irrevocably closed' before actual adjudication. *Valley*, at 1052 citing *Baran v. Port of Beaumont Navigation District of Jefferson County*, 57 F.3d, 436 (5th Cir. 1995), at 446.

> Bias or prejudice on the part of a judge may exhibit itself prior to the trial by acts or statements on his part. Or it may appear during the trial by reason of the actions of the judge in the conduct of the trial. **If it is known to exist before the trial it furnishes the basis for disqualification of the judge to conduct the trial.** Section 144, Title 28, U.S. Code. *Knapp v. Kinsey*, 232 F.2d 458, (6th Cir. 1956), at 465. Rehearing denied 235 F.2d 129, cert. denied 352 U.S. 892, 77 S.Ct. 131, 1 L.Ed.2d 86. (Bold emphasis added).

In the present case, Judge Berrigan's predisposition and bent of mind, as revealed by her actions and writing, satisfy the requirement for disqualification.

Pervasive Bias and Prejudice

Justice Scalia, joined by Justices Rehnquist, O'Connor, Thomas, and Ginsburg, expressed in *Liteky* the majority Court opinion that:

> A favorable or unfavorable predisposition can also deserve to be characterized as 'bias' or 'prejudice' requiring recusal because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. (That explains what some courts have called the 'pervasive bias exception' to the extrajudicial source doctrine. See, *e.g.*, *Davis v. Board of School Comm'rs of Mobile County*, 517 F.2d 1044, 1051 (CA5 1975), cert.

denied, 425 U.S. 944, 96 S.Ct. 1685, 48 L.Ed.2d 188 (1976).) *Liteky v. U.S.*, 510 U.S. 540 (1994), at 551.

In *Liteky*, Justices Kennedy, Blackmun, Stevens, and Souter challenged the extrajudicial source rule, arguing that undue emphasis should not be placed on the source of the contested mindset in determining whether disqualification is mandated by § 455(a).

> The statute does not refer to the source of the disqualifying partiality. And placing too much emphasis upon whether the source is extrajudicial or intrajudicial distracts from the central inquiry. One of the very objects of law is the impartiality of its judges in fact and appearance. . . . The relevant consideration under § 455(a) is the appearance of partiality, see *Liljeberg*, [*Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988)], at 860, 108 S.Ct., at 2202-03, not where it originated or how it was disclosed. *Liteky*, *Id.* at 558.

Justice Kennedy further expressed the opinion that the standard for disqualification under § 455(a) during the course of a judicial proceeding is too severe under *Liteky* and should be modulated to allow its intended protection.

> The [Supreme] Court holds that opinions arising during the course of judicial proceedings require disqualification under § 455(a) only if they 'display a deep seated favoritism or antagonism that would make fair judgment impossible.' (Reference deleted). That standard is not a fair interpretation of the statute, and is quite insufficient to serve and protect the integrity of the courts. *Liteky v. U.S.*, 510 U.S. 540 (1994), at 563.

> Section 455(a) . . . guarantee[s] not only that a partisan judge will not sit, but also that no reasonable

person would have that suspicion. See *Liljeberg*, at 860. *Liteky*, *Id.* at 567.

Notwithstanding the dichotomy of opinion over the extrajudicial source rule, petitioner contends that Judge Berrigan's long-standing, working relationship with Tulane University, and her duties as adjunct professor that bring her into contact with University administrators and faculty, meets the standard of a genuine extrajudicial source factor. Yet, even if this argument is discarded, the extraordinary circumstances of her prior rulings in *Bernofsky v. Tulane University Medical School* would re-qualify it on the basis of the "pervasive bias exception." And even if that argument were discarded, it would still be virtually impossible for Judge Berrigan to escape the appearance of partiality posed by the facts presented in the petition under review.

It may be noted that some courts now admit prior rulings in considerations of bias and prejudice.

> Because we seek to protect the public's confidence in the judiciary, our inquiry focuses not on whether the judge actually harbored subjective bias, **but rather on whether the record, viewed objectively, reasonably supports the appearance of prejudice or bias.** *United States v. Antar*, 53 F.3d 568 (3d Cir.1995) at 574; *United States v. Bertoli*, 40 F.3d 1384, 1412 (3d Cir.1994); *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155 (3d Cir. 1993) at 162; *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 98 (3d Cir.1992). *In re Antar*, 71 F.3d 97 (3rd Cir. 1995), at 101. (Bold emphasis added).

Determination of Impartiality

According to 28 U.S.C. § 455(a), recusal is required whenever there exists a genuine question concerning a judge's impartiality.

It may be argued that the determination of the judge concerned should be afforded great weight and should not be disturbed unless clearly erroneous. However, in the matter here under review, it is clear that Judge Berrigan engaged in actions that, in the aggregate, constitute serious and erroneous abuse of judicial discretion.

Judge Berrigan's claim of impartiality is contradicted by the facts of her working relationship with defendant and her willful concealment of these facts. Additionally, Judge Berrigan's deep seated favoritism toward defendant as revealed by prior rulings, and her "empathy" toward petitioner because he blames others for his "difficult life transitions" when he is the victim, demonstrates a pervasive bias that is so extreme as to indicate a clear inability to render fair judgment. The latter circumstance requires recusal. *Liteky v. U.S.*, 510 U.S. 540 (1994).

> The United States Supreme Court has made it clear that 'a fair trial in a fair tribunal is a basic requirement of due process,' in administrative adjudicatory proceedings as well as in courts. *Michigan Dept. of Soc. Servs. v. Shalala,* 859 F.Supp. 1113, 1123 (W.D.Mich.1994) (quoting *Withrow v. Larkin*, 421 U.S. 35, 36, 95 S.Ct. 1456, 1459, 43 L.Ed.2d 712 (1975)). Thus, as stated by Justice Kennedy in his concurring opinion in the most recent Supreme Court case construing the analogous federal statute on judicial disqualification, '[i]f through obduracy, honest mistake, or simple inability to attain self knowledge the judge fails to acknowledge a disqualifying predisposition or circumstance, an appellate court must order recusal no matter what the source.' *Liteky v. U.S.*, 510 U.S. 540, 563, 114 S.Ct. 1147, 1161, 127 L.Ed.2d 474 (1994) (Kennedy, J., concurring). This is because, as our court of appeals has declared, **'[l]itigants ought not have to face a judge where there is a reasonable question of impartiality . . . .'** *Alexander v. Primerica Holdings, Inc.*, 10 F.3d. 155, 162

(3d Cir.1993). *D.B. v. Ocean Tp. Bd. of Educ.*, 985 F.Supp 457 (D.N.J. 1997), at 540. (Bold emphasis added).

Furthermore, no judge should have ultimate authority over what constitutes his or her own conflict of interest.

> **No longer is a judge's introspective estimate of his own ability impartially to hear a case the determinate of disqualification under § 455. The standard now is objective. It asks what a reasonable person knowing all the relevant facts would think about the impartiality of the judge.** *Roberts v. Bailar,* 625 F.2d 125, (6th Cir. 1980), at 129. On remand, 538 F.supp 424. (References deleted, bold emphasis added).

The sentiments expressed in *Roberts v. Bailar, Id.*, are generally reinforced in *Liteky v. U.S.*, 510 U.S. 540 (1994).

In the final analysis, a reasonable person ***would*** question the impartiality of any judge who was an adjunct faculty member at a defendant university and had a continuing association with that university during even part of the time the case was before him or her. U.S. Senator John Breaux recently indicated that he would be receptive toward legislation "...establishing a presumption of conflict of interest and automatic recusal for judges... [who are] ...adjunct professors presiding as judges over civil cases in which the school at which that professor teaches is named as a defendant." *Appendix,* at A-10. Inquiring further into this situation, U.S. Senator Mary L. Landrieu has "...taken the liberty of contacting the appropriate officials, here in Washington, to request a report." *Appendix,* at A-12.

The concern expressed by the above legislators over the issue of recusal for adjunct faculty judges is clear, and indisputably, Louisiana's duly-elected U.S. senators are reasonable people.

CONCLUSION

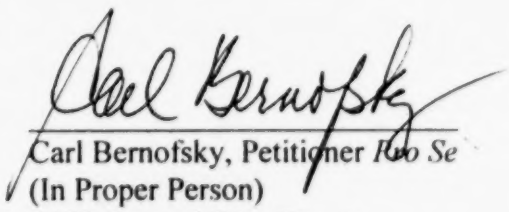
To maintain the integrity of the federal judicial system, the Court must be concerned whether the parties received fair and impartial treatment of their claims. At the risk of undermining the public's confidence in the judicial process, the welfare of the parties must receive priority over other considerations should a violation of § 455(a) occur. In the matter presently under review, justice requires that the District Court's judgment be vacated and the issues placed before a new judge. "The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact." *Liljeberg*, 486 U.S. 847, at 870 quoting *Public Utilities Comm'n of D.C. v. Pollak*, 343 U.S. 451, 466-467, 72 S.Ct. 813, 822-823, 96 L.Ed. 1068 (1952). (Frankfurter, J., in chambers).

Judge Berrigan's conduct has cast a long shadow on the litigation that is now before her, and recusal is the only remedy that will renew the public's faith in the integrity and fairness of the judicial system, prompt other judges to more carefully search for and disclose grounds for disqualification, and restore impartiality to the litigants in the judicial process. When statutory standards for recusal are met, as has been demonstrated here, the trial judge should step aside and let another judge, who is not associated with the defendant, be assigned.

Furthermore, under the extraordinary circumstance created by the new knowledge that Judge Berrigan was disqualified at the time she granted summary judgment in favor of defendant, and pursuant to a finding of willful negligence and prejudicial conduct by the District Court, petitioner respectfully prays to be relieved from the operation of summary judgment in Civil Action No. 97-358 (*Bernofsky v. Tulane University Medical School*), so that the case can be fairly tried by a jury on its merits in front of an impartial judge who is not associated with the defendant.

In conclusion, petitioner, Dr. Carl Bernofsky, respectfully prays that a writ of mandamus be issued by this Court directed to respondent, the Honorable Ginger Berrigan Judge of the United States District Court for the Eastern District of Louisiana, directing her to vacate her order denying petitioner's motion for recusal and disqualify herself from presiding in the action now pending before her, and to grant all other requested relief as the Court may deem proper.

Respectfully submitted,



Carl Bernofsky, Petitioner *Pro Se*
(In Proper Person)
6478 General Diaz Street
New Orleans, Louisiana 70124
(504) 486-4639

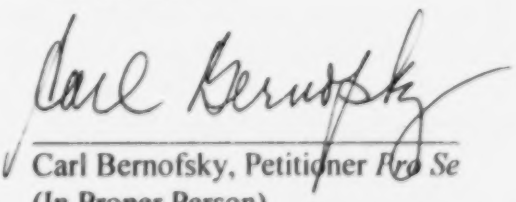
CERTIFICATE

I certify that one copy each of this Petition for Writ of Mandamus was hand delivered on or about August 26, 1999 to judge respondent and counsel for plaintiff and that three copies were hand delivered to counsel for defendant at the addresses indicated below. A separate, notarized certificate shows the actual date of service.

The Hon. Ginger Berrigan, Judge
U.S. District Court for the Eastern District of Louisiana
500 Camp Street
New Orleans, LA 70130
(504) 589-7515 - Respondent

Victor R. Farrugia, Esq.
228 St. Charles Avenue, Suite 1028
New Orleans, LA 70130
(504) 525-0250 - Counsel for Plaintiff

Julie D. Livaudais, Esq.
G. Phillip Shuler, III, Esq.
Richard B. Ramirez, Esq.
Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P.
2300 Energy Centre
1100 Poydras Street
New Orleans, LA 70163 - Counsel for Defendant - Respondent
(504) 585-7000



Carl Bernofsky, Petitioner *Pro Se*
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6478 General Diaz Street
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MINUTE ENTRY
BERRIGAN, J.
NOVEMBER 23, 1998

DR. CARL BERNOFSKY	CIVIL ACTION
VERSUS	NO. 98-1792 c/w 98-2102
ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND	SECTION "C"

IT IS ORDERED that the plaintiff's motion for recusal is hereby DENIED. For the record, the undersigned's only teaching undertaking at Tulane University School of Law involved volunteer substitute teaching a few classes for Judge Charles Schwartz, Jr., which involved no compensation. In addition, the Amistad Research Center is a distinct corporate entity which is located on Tulane's campus. In any event, membership on the Amistad's Board of Directors ended several years ago. There is no basis for the plaintiff's suggestion that the undersigned's impartiality might reasonably be questioned by virtue of these two circumstances under 28 U.S.C. § 455.

s/ *Ginger Berrigan*

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-31417
USDC No. 2:98-CV-1792 c/w 2:98-CV-2102

CARL BERNOFSKY, DR., Plaintiff-Appellant,

versus

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND, Tulane University Medical School, Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana

Before REYNALDO G. GARZA, DAVIS, AND PARKER, Circuit Judges.

BY THE COURT:

This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). In this employment discrimination case, the plaintiff has filed a notice of appeal from an order of the district court denying the plaintiff's motion for recusal of the district judge.

Federal appellate courts have jurisdiction over appeals only from (1) final orders, 28 U.S.C. § 1291; (2) orders that are deemed final due to jurisprudential exception or which can be properly certified as final pursuant to Fed. R. Civ. P. 54 (b); and (3) interlocutory orders that fall into specific classes, 28 U.S.C. 1292 (a), or which can be properly certified for appeal by the district court, 28 U.S.C. § 1292 (b). See Dardar v. Lafourche Realty Co., 849 F.2d 955, 957 (5th Cir. 1988); Save the Bay, Inc. v. United States Army, 639 F.2d 1100, 1102 (5th Cir. 1981). An order denying a motion to recuse is not immediately appealable. Nobby Lobby, Inc. v. City of Dallas, 970 F.2d 82, 85 & n.3 (5th Cir. 1992).

APPEAL DISMISSED.

MINUTE ENTRY
BERRIGAN, J.
FEBRUARY 8, 1999

DR. CARL BERNOFSKY	CIVIL ACTION
VERSUS	NO. 98-1792 c/w 98-2102
ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND	SECTION "C"

IT IS ORDERED that the motion to withdraw filed by Roger D. Phipps and Phipps & Phipps is hereby GRANTED. The upcoming trial, pre-trial conference and telephone status conference dates and all deadlines remain in effect. This order does not affect the representation of the plaintiff in any appeal.

IT IS FURTHER ORDERED that the plaintiff enroll substitute counsel no later than February 22, 1999, at 5:00 p.m.

A copy of this minute entry and order shall be sent to the plaintiff, certified mail, return receipt requested, at the following address:

Dr. Carl Bernofsky
6478 General Diaz Streeet
New Orleans, LA 70124

s/ *Ginger Berrigan*

BEFORE THE JUDICIAL COUNCIL OF THE

FIFTH CIRCUIT

IN RE: NO. 99-05-372-0118

PETITION FOR REVIEW BY CARL BERNOFSKY OF THE FINAL ORDER FILED MARCH 1, 1999, DISMISSING JUDICIAL MISCONDUCT COMPLAINT AGAINST UNITED STATES DISTRICT JUDGE GINGER BERRIGAN, UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT OF 1980.

ORDER

An Appellate Review Panel of the Judicial Council of the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the Order of Chief Judge King, dated March 1, 1999, dismissing the Complaint of Carl Bernofsky, against United States District Judge Ginger Berrigan, under the Judicial Conduct and Disability Act of 1980. The Order is therefore

AFFIRMED.

19 APR 99
Date

s/ E Grady Jolly
E. Grady Jolly
United States Circuit Judge,
For the Judicial Council of
The Fifth Circuit

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
500 CAMP ST.
NEW ORLEANS, LA 70120

CHAMBERS OF
GINGER BERRIGAN
UNITED STATES DISTRICT JUDGE

June 21, 1999

Hon. Charles Fulbruge, III
Clerk of Court
Fifth Circuit Court of Appeals
600 Camp Street
New Orleans, Louisiana 70130

RE: 99cv30614 In Re: Bernofsky

Dear Mr. Fulbruge:

This is in reply to your letter of June 16th, inviting a response to the above petition.

In a previous filing by Dr. Bernofsky, I did respond and provide some information regarding my connections with Tulane University which was the focus of that pleading, as well as this one.

I have no additional information regarding Tulane but I thought it might be useful to provide some more information generally. After Dr. Bernofsky's prior counsel resigned, Dr. Bernofsky did advertise in various outlets, including the Internet, seeking new

counsel. In those various advertisements, he did continue his criticism of my remaining in the case, in varying detail. Copies of some of these critiques have been sent to me by various lawyers in town although I have not sought them out myself. I didn't keep the copies but I imagine they can be re-accessed if the Court thinks they're pertinent. I was concerned to the extent that I felt Dr. Bernofsky's continuing insistence that the trial judge be recused was hindering his ability to obtain new counsel. Fortunately, he did locate an attorney in the New Orleans area who agreed to represent him. I was hopeful at that point that the recusal issue would be laid to rest. The counsel he retained is someone who had litigated several employment discrimination cases in our section of Court.

I was very surprised therefore to see the latest filing by Dr. Bernofsky. I convened a status conference by telephone with his counsel and opposing counsel this past Thursday. I expressed my concern that Dr. Bernofsky was apparently continuing to focus upon me as his problem and that this would continue to cause an undue distraction and disruption to the case. At that point, I felt it would be in the interest of judicial efficiency if I did step down, not because I felt I was biased or because of any appearance of partiality, but to eliminate the distraction.

We subsequently researched the issue some more and it appears to me that the only basis for recusal, self-triggered or otherwise, is either actual impartiality or the appearance of impartiality [*sic*]. I honestly believe that neither of those apply in this situation, so I don't feel I can or should step down.

I say all the above to tell you that I do not harbor any ill will toward Dr. Bernofsky. If anything, I feel empathy. He has gone through some very difficult life transitions in recent years, some of which he genuinely perceives to [be] caused by the bias and fault of others, including myself. I regret that he continues to have that perception. And while I don't wish to be part of the problem, it

doesn't seem that recusal is the viable solution - rather it may perpetuate the problem by reinforcing the perception.

Sincerely,

s/ *Ginger Berrigan*

Ginger Berrigan

cc: Victor R. Farrugia
Julie Livaudais

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 99-30614

In Re: CARL BERNOFSKY

Petitioner

Petition for Writ of Mandamus to the United States
District Court for the
Eastern District of Louisiana, New Orleans

Before JOLLY and SMITH Circuit Judges.*

BY THE COURT:

IT IS ORDERED that the petition for writ of mandamus is **DENIED.**

* This matter is being decided by a quorum. 28 U.S.C. 46 (d)

United States Senate
WASHINGTON, DC 20510-1804

May 24, 1999

Carl Bernofsky, Ph.D.
6478 General Diaz Street
New Orleans, LA 70124

Dear Dr. Bernofsky:

Thank you for contacting me regarding your concerns about adjunct professors presiding as judges over civil cases in which the school at which that professor teaches is named as a defendant.

I appreciate knowing your thoughts on this subject. As you point out, Section 3(E)(1) of the ABA Code of Judicial Conduct requires a judge to disqualify himself from any proceeding in which his or her impartiality might reasonably be questioned. Not knowing any more about the case to which you refer in your letter than what you have told me, I can only presume that no questions about the neutrality of the adjunct professor/judge in that case were shown to be within reason. Alternatively, it could well have been a bad decision, in which case it should be appealed. While I am hesitant to resort to a legislative remedy for every bad court case that is handed down, I do want to point out that we are in agreement that avoiding the appearance of impropriety is an essential component of the Judiciary's role in the rule of law.

Rest assured that I will keep your support for a law establishing a presumption of conflict of interest and automatic recusal for judges in these situations in mind. In the meantime, if I can assist you in any other way, please let me know.

With kind regards,

Sincerely,

s/ *John*

JOHN BREAUX
United States Senator

JB/jhl

United States Senate
WASHINGTON, DC 20510-1804

July 1, 1999

Dr. Carl Bernofsky
6478 Gen. Diaz St.
New Orleans, Louisiana 70124-3106

Dear Dr. Bernofsky:

Thank you very much for letting me hear from you concerning federal judges who serve as adjunct professors, yet preside in civil cases where the University they work for is a defendant.

I will certainly be pleased to look into this matter for you, and have taken the liberty of contacting the appropriate officials, here in Washington, to request a report. I will be back in touch with you as soon as I receive any additional information.

I appreciate your bringing this important matter to my attention, and I hope that you will continue to contact me when I can be of assistance to you.

With kindest regards, I am

Sincerely,

s/ Mary L. Landrieu

Mary L. Landrieu
United States Senator

MLL:lmc

Supreme Court, U.S.
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No. 99-372

IN THE

Supreme Court of the United States

DR. CARL BERNOFSKY,

Petitioner,

v.

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND (TULANE UNIVERSITY SCHOOL OF MEDICINE),

Respondent.

ON PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Respondent, The Administrators of the Tulane Educational Fund, disagrees with the statement of the question presented by Petitioner because it is based on erroneous representations of fact. The question presented for consideration is:

1. Should a United States District Court Judge, who occasionally taught as a substitute teacher for a Tulane University adjunct faculty member, and who is a former member of the board of directors of an independent research center located on Tulane University's campus, be disqualified from presiding in a case in which Tulane University is a party?

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Respondent, The Administrators of the Tulane Educational Fund ("Tulane") submits that there is no basis for granting a writ of mandamus in this case. The United States Court of Appeals for the Fifth Circuit correctly determined that recusal was not mandated by United States District Judge Ginger Berrigan's tenuous affiliations to Tulane in this case. Petitioner has presented no exceptional circumstances warranting the exercise of this Court's discretionary powers and has not shown that the writ will aid in the Court's appellate jurisdiction.

STATEMENT OF THE CASE

A. Procedural Background

Before this Honorable Court is the latest salvo in Petitioner Carl Bernofsky's parade of lawsuits against his former employer, Tulane University. The litigation all stems from the termination of his employment as a (non-tenured) research professor in the Department of Biochemistry at Tulane Medical School; his complaints have included discrimination, retaliation, defamation, and ERISA violations. The subject of the instant Writ is Bernofsky's perception that the federal district judge who has presided over his many cases is biased against him and should have recused herself from the proceedings.

Bernofsky's first suit was filed against Tulane in the United States District Court for the Eastern District of Louisiana in 1995, alleging discrimination under 42 U.S.C. § 1981 and the ADEA as well as various state law claims. After Tulane demonstrated a legitimate reason for Bernofsky's dismissal from the Tulane faculty and Bernofsky was unable to prove that the profferred reason was in any

way pretextual, Judge Ginger Berrigan granted Tulane's Motion for Summary Judgment and dismissed Bernofsky's suit on April 21, 1997. *Bernofsky v. Tulane Univ. Med. School*, 962 F. Supp. 895 (E.D. La. 1997). The Fifth Circuit affirmed the district court's ruling and denied Bernofsky's Petition for Rehearing. *Bernofsky v. Tulane Univ. Med. Center*, 136 F.2d 137 (5th Cir. 1998). This Honorable Court denied Bernofsky's petition for writ of certiorari to review the dismissal of his case. *Bernofsky v. Tulane Univ. Med. School*, __ U.S. __, 119 S. Ct. 48, 142 L. Ed. 2d 37 (Oct. 5, 1998).

Bernofsky then filed two more lawsuits against Tulane in Louisiana state court, which were removed, and one more federal suit, all of which were assigned to Judge Berrigan.[1] On October 15, 1998, Bernofsky first filed a motion to recuse Judge Berrigan, arguing that Judge Berrigan's past service as an unpaid substitute professor of law at Tulane and her brief peripheral association with an independent nonprofit corporation, the Amistad Research Center, located on Tulane's campus, warranted disqualification under 28 U.S.C. § 455(a). Tulane opposed Bernofsky's motion to recuse and on November 23, 1998, the district court denied his motion. *Bernofsky v. Tulane*, Civil Action No. 98-1792, Docket No. 24 (E.D. La. Nov. 23, 1998). Bernofsky's improper attempt to appeal the district court's interlocutory ruling was dismissed by the Fifth Circuit. *Bernofsky v. The Administrators of the Tulane Educational Fund*, Case No. 98-31417 (5th Cir. Feb. 2, 1999).

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1. Under Local Civil Rules 3.1 and 3.1.1E of the Uniform Local Rules of the United States District Courts for the Eastern, Middle, and Western Districts of Louisiana, Judge Berrigan retained jurisdiction of these collateral proceedings.

Undeterred, and clearly unsatisfied with his inability to have Judge Berrigan disqualified, Bernofsky filed a Complaint of Judicial Misconduct with the Fifth Circuit against Judge Berrigan. After his Complaint of Judicial Misconduct was rejected and his "appeal" denied, *In re: The Complaint of Dr. Carl Bernofsky*, Docket No. 99-05-372-0118 (5th Cir. March 1, 1999), Bernofsky filed a Petition for Writ of Mandamus. The Fifth Circuit correctly denied Bernofsky's Petition for Writ of Mandamus on July 6, 1999. *In re: Carl Bernofsky*, Docket No. 99-30614 (5th Cir. July 6, 1999). This Petition for Writ of Mandamus followed.

B. The Relevant Facts

1. The Amistad Research Center

One of the bases for Bernofsky's repeated attempts to recuse Judge Berrigan is the fact that she was a member of the Board of Directors of the Amistad Research Center from 1990-1994. But Judge Berrigan's membership on the Board of Directors ended in 1994, before Bernofsky filed his first suit against Tulane in 1995. Moreover, the relationship of the Amistad Research Center to Tulane is too tenuous to support Bernofsky's allegations of an improper affiliation between Tulane and the Judge.

The Amistad Research Center is a non-profit corporation and a completely separate entity from Tulane. Tulane neither controls nor owns the Center, and does not pay the salaries of its employees. Tulane provides space for the Center on its Uptown campus. There, the Center makes available to the general public materials of historic significance pertaining to the history and culture of ethnic minorities in the United States. The Center is administered by a Board of

Directors, only two of whom are appointed by Tulane. Tulane's appointees are drawn from its own faculty and staff. Tulane has never appointed Judge Berrigan or any other judge to the Center's Board of Directors.

2. Judge Berrigan's Teaching Relationship to Tulane

Judge Berrigan's only teaching undertaking at Tulane involved substitute teaching several classes for her colleague, Judge Charles Schwartz, Jr. at Tulane University School of Law, for which she received no compensation. See Petitioner's Exhibit A-1. Judge Berrigan is not an adjunct faculty member at Tulane University.

REASONS FOR DENYING THE WRIT

I.

JUDGE BERRIGAN'S TEACHING AND DIRECTORSHIP ACTIVITIES INVOLVE ONLY A PERIPHERAL ASSOCIATION TO TULANE AND DO NOT JUSTIFY RECUSAL

Petitioner has requested that a Writ of Mandamus issue compelling Judge Berrigan to disqualify herself from these proceedings. Bernofsky asserts two bases for the issuance of this writ, each more far-fetched than the other. First, Bernofsky argues that the district judge's occasional participation as a non-paid substitute instructor in a Tulane trial advocacy course raises the specter of bias and thus warrants disqualification under 28 U.S.C. § 455(a). Second, Bernfosky theorizes that Judge Berrigan's prior service on the board of an independent non-profit research center which is located on Tulane's campus somehow implicates 28 U.S.C.

§ 455(b)(5)(i). Finally, Bernofsky reveals his true motive for asserting these groundless recusal arguments when he asks this Honorable Court to vacate the district court's 1997 dismissal of his Title VII lawsuit against Tulane.

Petitioner's invocation of § 455 is a thinly-veiled procedural attempt at breathing new life into claims which were found substantively deficient by the district court, by the Fifth Circuit Court of Appeals (twice), and by this Honorable Court. Bernofsky must not be permitted to embellish facts and distort the record and thus obtain a fifth bite at the same rotten apple.

A. Petitioner Is Not Entitled To The Extraordinary Remedy Of Mandamus

It is well settled that a writ of mandamus "is an extraordinary remedy reserved for extraordinary situations" and "is not to be used as a substitute for appeal." *In re: Terra Intern., Inc.*, 134 F.3d 302, 305 (5th Cir. 1998), *quoting In re: American Marine Holding Co.*, 14 F.3d 276, 277 (5th Cir. 1994); *Kerr v. United States District Court*, 426 U.S. 394, 965 S. Ct. 2119, 48 L. Ed. 2d 725 (1976). Generally, mandamus is appropriate "when the trial court has exceeded its jurisdiction or has declined to exercise it, or when the trial court has so clearly and indisputably abused its discretion as to compel prompt intervention by the appellate court." *In re: Terra Intern., Inc., supra,* citing *In re: Dresser Industries Inc.*, 972 F.2d 540, 543 (5th Cir. 1992) *quoting In re: Chesson*, 897 F.2d 156, 159 (5th Cir. 1990). More specifically, and with respect to the present matter, while a petition for writ of mandamus may be the appropriate procedural device for challenging the denial of a disqualification motion, the relief sought should be granted

only in exceptional circumstances. *In re: Chevron USA, Inc.*, 121 F.3d 163, 165 (5th Cir. 1997), *citing In re: City of Houston*, 745 F.2d 925, 927 (5th Cir. 1984).

When Bernofsky's stated reasons for seeking Judge Berrigan's recusal are scrutinized under § 455, the conclusion is inescapable that his petition for a writ of mandamus must be denied. The district court's impartiality cannot reasonably be called into question based solely upon Judge Berrigan's peripheral association with a nonprofit corporation located on Tulane's uptown campus and her occasional teaching engagements at Tulane. Bernofsky's contrived conspiracy theories simply do not warrant application of the extraordinary remedy of mandamus.

B. Petitioner Has Not Carried His Burden Under § 455

A party seeking to disqualify a judge "must show that, if a **reasonable man** knew of all the circumstances, he would harbor doubts about the judge's impartiality." *Travelers Ins. Co. v. Liljeberg Enterprises, Inc.*, 38 F.3d 1405, 1408 (5th Cir. 1994), *citing Matter of Billedeaux*, 972 F.2d 104, 105 (5th Cir. 1992), *quoting Chitimacha Tribe of La. v. Harry L. Laws Co.*, 690 F.2d 1157, 1165 (5th Cir. 1982) (citations omitted), *cert. denied*, 464 U.S. 814, 104 S. Ct. 69, 78 L. Ed. 2d 83 (1983). The standard to be applied is an objective one:

> The question that the governing statute requires me to answer is whether — taking as one's instrument of observation and assessment not *my* perspective but the perspective of an objective external observer who is not acquainted with me

> but is acquainted with the record facts recited above — my "impartiality might reasonably be questioned."

United States v. Muskovits, 866 F. Supp. 178, 181 (E.D. Pa. 1994) (emphasis in original; citations omitted). Bernofsky cannot establish that a reasonable person would conclude that the remote connection between Judge Berrigan and Tulane creates an appearance of impropriety.

There are, of course, many cases in which petitioners have challenged through mandamus a district court's denial of a motion to disqualify, and some have been successful. In *Tramonte v. Chrysler Corporation*, 136 F.3d 1025 (5th Cir. 1998), for example, the Fifth Circuit reversed and remanded for further discovery the district court's denial of a motion to recuse when the record was insufficient to determine whether the district judge's family member might qualify as a member of a class action lawsuit. In *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155 (3rd Cir. 1993), a petition for writ of mandamus was granted disqualifying a district judge under § 455 when the record established a history of often bitter disputes between the court and counsel for the petitioners. And, in *Nichols v. Alley*, 71 F.3d 347 (10th Cir. 1995), a petitioner's writ of mandamus was granted compelling disqualification of the district court judge whose chambers were severely damaged when a bomb planted by Nichols exploded. In each of these cases, the respective appellate courts have been presented with issues both compelling and very real: a family member falling within a class of litigants, a clear history of open dispute with counsel, the natural response of one to catastrophe on a massive scale. Whether bias was actually present or simply could not be objectively discounted, the connection was too close and recusal was required.

No such circumstances are present herein. Conjuring up alliances between Tulane and any state or federal judge even peripherally associated with the school, Bernofsky hopes to create the illusion of bias under § 455(a) where clearly none exists. Finding deceit and complicity in the innocuous, Bernofsky has seized upon Judge Berrigan's charitable involvement with a non-profit research group and fashioned this into a § 455(b)(5)(i) violation.

1. There is no basis for disqualification under § 455(a)

Judge Berrigan's prior, now ended, service to the law school as an unpaid substitute instructor clearly does not satisfy § 455(a). For example, in *Tonkovich v. Kansas Bd. Of Regents*, 924 F. Supp. 1084, 1086-88 (D. Kan. 1996), the district court found that:

> The fact that [the Magistrate Judge] may have given service to the law school as an adjunct instructor does not give rise to a reason for his recusal, nor for mine. . . . Counsel for plaintiff . . . leaps from one tenuous connection to another to suggest that this judge could somehow be perceived to be a part of an intrigue against the plaintiff. The suggestion is rejected.

Like Tonkovich, Bernofsky here "leaps from one tenuous connection to another" in attempting to establish a § 455(a) disqualifying circumstance. As in *Tonkovich*, Petitioner's fanciful suggestion must be rejected.

A similar attempt at disqualification was made under similar facts in *Levitt v. University of Texas at El Paso*, 847 F.2d 221 (5th Cir. 1988), *cert. denied*, 488 U.S. 984, 109

S. Ct. 536, 102 L. Ed. 2d 567 (1988). In *Levitt*, a former tenured chemistry professor was terminated from his position for misconduct and filed suit against the university alleging that he was fired because he was Jewish. The district court granted judgment in favor of the university after a trial on the merits (Levitt I), and subsequently dismissed a second lawsuit on grounds of *res judicata* and collateral estoppel (Levitt II). Levitt appealed arguing, among other things, that the district judge should have recused himself in Levitt II because his wife was a student at the university and because the judge obtained his B.A. and J.D. degrees from the university. *Levitt, supra*, at 224-226. The Fifth Circuit found no merit in Levitt's tenuous disqualification claims, and found instead that district judge's association with the university simply did not trigger § 455(a). *Id.* at 226. In the instant case, Judge Berrigan is not an alumna of Tulane (University of Wisconsin, B.A.; Louisiana State University, J.D.), nor has Petitioner alleged any demonstrable acts of favoritism by Judge Berrigan to Tulane apart from her occasional substitute teaching. Clearly, Judge Berrigan's associations, such as they are, with Tulane are fewer in number and lesser in degree than those found not to be violative of § 455 in *Levitt*.

Similarly, in *Wu v. Thomas et al.*, 996 F.2d 271 (11th Cir. 1993), *cert. denied*, 511 U.S. 1033, 114 S. Ct. 1543, 128 L. Ed. 2d 195 (1994), a university professor alleged that she was being subjected to unlawful retaliation by the University of Alabama and a number of supervisors for having previously asserted an unsuccessful sex discrimination lawsuit. The first lawsuit (Wu I) was tried on the merits to the district judge who found for the university, and the second lawsuit (Wu II) was filed three years later. *Id.* at 272. Following a largely unsuccessful trial on the merits

of Wu II, the plaintiff appealed and argued, *inter alia*, that the district judge should have recused himself under 28 U.S.C. § 455(a) because of alleged "ties" to the university. *Id.* at 274-75.

Wu alleged that disqualification was required under § 455(a) because the district judge was an adjunct professor at the university and had given contributions to it in the past. In denying Wu's recusal motion, the district judge noted that he received no salary as an adjunct professor and that his duties were limited to participating in a judicial internship program. *Id.* at 275. In affirming the district judge's refusal to disqualify himself, the Fifth Circuit concluded that "[o]n these facts (which are uncontested), no reasonable observer would assume that [the district judge] had extra-judicial knowledge of this case or otherwise question [his] impartiality." *Id.* As in *Wu*, no reasonable observer could assume that Judge Berrigan's limited role as an uncompensated substitute instructor at Tulane's Law School could raise the specter of impartiality. Thus, as in *Wu*, disqualification under § 455(a) is inappropriate.

Like the plaintiff in *Wu*, Bernofsky attempts to bootstrap a theory of bias based upon unfavorable rulings by the district judge in previous litigation. However, to the extent that Bernofsky's Motion for Recusal is based upon judicial, as opposed to extra-judicial, conduct, his complaint finds no support under § 455. That an adverse ruling should not serve as a basis for disqualification is based upon the "practical purpose of preventing parties from using the claim of partiality as a pretext for judge-shopping . . .". *In Re Jewelcor, Inc.*, 166 Br. 41, 44 (Bkrtcy. M.D. Pa. 1994), *quoting United States v. Conforte*, 457 F. Supp. 641, 657 (D.C. Nev. 1978), *aff'd in pertinent part*, 624 F.2d 869 (9th

Cir. 1980), *cert. denied*, 449 U.S. 1012, 101 S. Ct. 568, 66 L. Ed. 2d 470 (1980). It is well settled that complaints of prior adverse rulings are insufficient grounds for disqualification. *See Hepperle v. Johnston*, 590 F.2d 609, 614 (5th Cir. 1979), *citing United States v. Partin*, 552 F.2d 621, 637 (5th Cir. 1977), *cert. denied*, 434 U.S. 903, 98 S. Ct. 298, 54 L. Ed. 2d 189 (1977). Moreover, even if Judge Berrigan's ruling granting summary judgment could be considered, that ruling was correct and was not motivated in any way by bias, as shown by the Fifth Circuit's affirmation of that ruling and this Court's denial of Bernofsky's petition for a writ of certiorari to review that ruling. Petitioner must not be allowed to effectively "opt-out" of Judge Berrigan's section of court simply because he disagrees with previous rulings. Bernofsky's scheme to disqualify Judge Berrigan is improper "judge-shopping," and must be rejected.

Bernofsky further attempts to show bias by arguing at page 19 of his writ that the very fact that he filed a motion seeking Judge Berrigan's recusal must have prejudiced the court against him. But if this were true, the mere filing of an unfounded recusal motion could be used as a means of replacing a judge one finds unfavorable. Clearly, this result cannot be countenanced.

The present facts are far different from those presented for review to this Honorable Court in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d 855 (1988). In *Liljeberg*, the district judge was found to have been an active board member of Loyola University, a party in interest with respect to on-going litigation assigned to the district judge. Because Loyola stood to realize a significant financial gain as a result of the impending sale of land made the basis of the on-going

litigation, and because the district judge personally participated in board meeting during which the subject matter of the litigation was discussed, the Fifth Circuit found that the district judge erred in refusing to recuse himself under § 455(a). *Id.* at 486 U.S. 852.

The differences between *Liljeberg* and this case are many and clear. First, unlike the district judge in *Liljeberg*, Judge Berrigan is not a member of the board of directors of Tulane University. Judge Berrigan was a member of the board of directors of the Amistad Research Center, a non-profit independent research center located on Tulane's campus; she is not a member of Tulane's board of directors. Of course, the Amistad Research Center is not a party to the present litigation, and has absolutely no connection to Bernofsky's claims whatsoever. Furthermore, while the district judge in *Liljeberg* was found to have personally participated in university board meetings during which the on-going litigation was discussed, Bernofsky has not even attempted to establish that Judge Berrigan's tenuous association with Tulane as either a substitute professor or a former board member of an unrelated non-profit organization is even remotely associated with the litigation herein. While recusal under § 455(a) may have been appropriate under the circumstances present in *Liljeberg*, the facts in this case are far different and require a different result.

2. There is no basis for disqualification under § 455(b)(5)(i)

Equally tenuous is Judge Berrigan's connection to Tulane through the Amistad Research Center, a non-profit corporation and a completely separate entity from Tulane. As previously noted, Tulane neither controls nor owns the

Center, and does not pay the salaries of its employees. Tulane provides space for the Center on its Uptown campus where the Center makes available to the general public materials of historic significance concerning the history and culture of ethnic minorities in the United States. The Center is administered by a Board of Directors, only two of whom are appointed by Tulane. Tulane's appointees are drawn from its own faculty and staff. Tulane has never appointed Judge Berrigan to the Center's Board of Directors.

An insubstantial connection to a university does not give rise to the requirement of recusal. *See*, for example, *Lunde v. Helms*, 29 F.3d 367, 370 (8th Cir. 1994), *cert. denied*, 513 U.S. 1155, 115 S. Ct. 1111, 130 L. Ed. 2d 1076 (1995) ("We do not think that the district judge's having graduated from the university law school, even though the university is a party defendant, without more is a reasonable basis for questioning the judge's impartiality."); *Easley v. University of Michigan Board of Regents*, 906 F.2d 1143, 1146-47 (6th Cir. 1990), *cert. denied*, 499 U.S. 947, 111 S. Ct. 1424, 113 L. Ed. 2d 467 (1991) ("Without more, the amicable feelings [the district judge] undoubtedly has for his alma mater . . . fail to demonstrate a sufficient basis for his recusal"). Bernofsky has shown no jurisprudential authority to the contrary. Nor has he shown that Judge Berrigan's connection to Tulane is anything other than insubstantial. Under these facts, recusal is not warranted under 28 U.S.C. § 455(b)(5)(i).

CONCLUSION

In considering a writ of mandamus "the determination of the judge concerned should be afforded great weight, and should not be disturbed unless clearly erroneous." *Kinnear-Weed Corp. v. Humble Oil and Refining Co.*, 324 F. Supp. 1371, 1385 (S.D. Tex. 1969), *aff'd*, 441 F.2d 631 (5th Cir.) *cert. denied*, 404 U.S. 941, 92 S. Ct. 285, 30 L. Ed. 2d 255 (1971). Tulane respectfully suggests that Judge Berrigan did not abuse her sound judicial discretion in denying Bernofsky's motion to recuse her, and that the Fifth Circuit appropriately denied his writ of mandamus.

What is clear, here, is that Bernofsky has invoked an exceptional remedy for a decidedly partisan purpose. However, he has not satisfied his heightened burden of establishing entitlement to an issuance of a writ of mandamus, nor has he begun to demonstrate that Judge Berrigan abused her judicial discretion in denying his Motion to Recuse. Carl Bernofsky's Petition for Writ of Mandamus should be denied, and all costs of these proceedings should be borne by him.

Respectfully submitted,

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In the Supreme Court of the United States

October Term, 1999

In re* CARL BERNOFSKY, *Petitioner

DR. CARL BERNOFSKY,
Plaintiff - Petitioner,
v.

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND (TULANE UNIVERSITY SCHOOL OF MEDICINE),
Defendant - Respondent.

Petition for Writ of Mandamus

Petitioner's Reply Brief

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QUESTION PRESENTED FOR REVIEW

Respondent, Administrators of the Tulane Educational Fund, has called into question the relationship of the Honorable Ginger Berrigan with Tulane University. Petitioner, Dr. Carl Bernofsky, by means of the documentary evidence appended herewith, corrects errors of fact introduced by respondent.

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EXHIBITS A-1

STATEMENT OF THE CASE

I. Judge Berrigan's Adjunct Professorship

Respondent makes the claim that Judge Berrigan is not an adjunct faculty member at Tulane University and that her only involvement with teaching at Tulane was as a substitute teacher for the course taught by Judge Charles Schwartz, Jr. *Respondent's Brief in Opposition*, at 4.

Despite these assertions, Federal District Court Judge Ginger Berrigan was Adjunct Associate Professor of Law at Tulane University for many years and taught the course, *Trial Advocacy*, during the 1995-96 academic year. *Appendix*, at A-1 & A-2. Since then, Judge Berrigan has maintained a professional association with Tulane through her continued participation in the Law School's Judicial Externship Program (*Appendix*, at A-3 to A-5), and as a substitute instructor for the course, *Federal Practice & Procedure: Trials*, taught by Adjunct Professor, Federal District Court Judge Charles Schwartz, Jr. *Appendix*, at A-6 & A-7.

Judge Berrigan's desire to continue her professional relationship with Tulane as adjunct professor is demonstrated by her intention to participate in the Law School's Judicial Externship Program until at least 2000, as evidenced in the current Tulane Law School Catalog. *Appendix*, at A-5.

From petitioner's prior knowledge, Tulane's adjunct faculty appointments are made for periods of one or more academic years that begin on July 1st and end the following June 30th. Tulane's latest claim that "Judge Berrigan is not an adjunct faculty member," indicates that her latest appointment was allowed to lapse or not renewed, perhaps as a means of "damage control." This also raises the possibility of ex parte communications between the Judge and defendant.

The non-renewal of Judge Berrigan's adjunct appointment, coupled with Tulane's vigorous efforts to refute her association with defendant and justify her right to sit in the proceedings currently before her, implies that Judge Berrigan may be more valuable to Tulane as a judge than as a teacher. These actions raise a material question of Tulane's underlying motivation in its strenuous opposition to an impartial judge.

II. Judge Berrigan's Board Membership

Respondent makes the claim that Judge Berrigan's membership on the Board of Directors of Tulane University's Amistad Research Center ended in 1994, just before petitioner filed his first lawsuit against Tulane in January, 1995. *Respondent's Brief in Opposition*, at 3.

Despite respondent's assertion, Federal District Court Judge Ginger Berrigan reported in the 1995, 1996, and 1997 editions of the *Almanac of the Federal Judiciary* that she had a continuing membership in Tulane's Amistad Research Center during all of those years. *Appendix*, at A-8 to A-10. The *Almanac of the Federal Judiciary* is updated twice annually, allowing her adequate opportunities to make earlier corrections. Moreover, Judge Berrigan never indicated that those entries were erroneous when her membership on Amistad's Board of Directors was pointed out in petitioner's initial motion for her recusal. *Bernofsky v. Tulane*, Civil Action No. 98-1792, Docket No. 18 (E.D. La. Oct. 15, 1998).

It was only after petitioner had discovered Judge Berrigan's continuing membership in Tulane's Amistad Research Center and raised objections to her adjudication in his lawsuits against Tulane that Judge Berrigan altered her record. The altered record appears in the *Almanac of the Federal Judiciary* for 1998. *Appendix*, at A-11. It creates the appearance that Judge Berrigan did not serve as a director of a Tulane research center during the time that she presided in petitioner's lawsuits against Tulane.

Respondent now utilizes this newly-created record to support the claim that Judge Berrigan was not associated with the defendant when she sat in petitioner's cases against Tulane. This appears to be another attempt at "damage control."

III. Tulane's Amistad Research Center

Tulane is justifiably proud of its Amistad Research Center and represents it publically as a Tulane University affiliate in newspapers and directories. *Appendix*, at A-12 & A-13, respectively.

Far from being an independent entity, the Amistad Research Center takes its place among the many centers established at Tulane University. *Appendix*, at A-14. Despite respondent's assertion of Amistad Center's total independence, the Center is subject to many of the same regulations imposed by Tulane on other centers located on its campus, and the financial and other material support that the Amistad Center receives from Tulane, as outlined in the initial Petition, is undisputed.

The integration of Amistad's key administrative personnel (*Appendix*, at A-15) into the Tulane family is exemplified by the listing of Amistad's Executive Director and Comptroller in Tulane University's Directory for Faculty and Staff. *Appendix*, at A-16 & A-17, respectively.

CONCLUSION

The arguments for mandamus put forth in the initial Petition remain unchanged, except they have acquired greater significance as a result of respondent's recent claims that were clearly intended to mislead this Honorable Court.

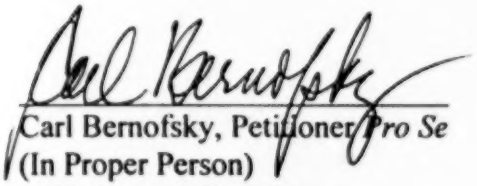
That the Honorable Ginger Berrigan, Judge of the United States District Court for the Eastern District of Louisiana, willfully concealed her material and long-term association with

the defendant during the years that she sat in judgment of petitioner's lawsuits against Tulane University is undisputed. To offset this state of affairs, respondent has attempted to minimize the significance of Judge Berrigan's association with the defendant. However, as demonstrated herein, respondent could accomplish this only by relying on misrepresentations of fact.

The extraordinary behavior of Judge Berrigan warrants the extraordinary remedy afforded by mandamus. For the reasons stated here and in the initial Petition, petitioner, Dr. Carl Bernofsky, respectfully prays that a writ be issued by this Honorable Court directed to respondent, the Honorable Ginger Berrigan, Judge of the United States District Court for the Eastern District of Louisiana, directing her to vacate her order denying petitioner's motion for recusal and disqualify herself from presiding in the action now pending before her, and to grant all other relief as the Court may deem proper.

Respectfully submitted,

Oct. 7, 1999
Date



Carl Bernofsky, Petitioner *Pro Se*
(In Proper Person)
6478 General Diaz Street
New Orleans, Louisiana 70124
(504) 486-4639

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EXHIBIT'S
1 - 17

Tulane Law School

James A. Cobb Jr.
Professor and Director (spring), JD, Tulane University

Lynn Luker
Professor and Director (fall), JD, LLM in Admiralty, LI

Julian Rollins Murray
Professor and Director (fall and spring), JD, Tulane Uni

Associate Professors

Michael Allweiss
JD, Tulane University

Judy Barrasso
JD, Tulane University

Roland Belsome
JD, Tulane University

Raul Bencomo
JD, Louisiana State University

Allan Berger
JD, Loyola University (La.)

The Honorable Ginger Berrigan
JD, Louisiana State University

James E. Blazek

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1995-96 TRIAL ADVOCACY FACULTY

James A. Cobb Jr.
Professor and Director (spring), JD, Tulane University

Lynn Luker
Professor and Director (fall), JD, LLM in Admiralty, LLM in Energy & Environment, Tulane University

Julian Rollins Murray
Professor and Director (fall and spring), JD, Tulane University

Associate Professors

Michael Allweiss
JD, Tulane University

Judy Barrasso
JD, Tulane University

Roland Belsome
JD, Tulane University

Raul Bencomo
JD, Louisiana State University

Allan Berger
JD, Loyola University (La.)

The Honorable Ginger Berrigan
JD, Louisiana State University

James E. Blazek
JD, Loyola University

Michael Bollman
JD, Tulane University

Marie Bookman
JD, Loyola University (L

Joy Goldberg Brau
JD, Tulane University

Edward J. Castaing
JD, Tulane University

Michael M. Christo
JD, Tulane University

Bruce A. Cranner
JD, Tulane University

William S. Culver
JD, Loyola University

Samuel S. Dalton
JD, Loyola University (L

Michael H. Ellis
JD, Tulane University

Deborah Foshee
JD, Tulane University

The Honorable Edw
JD, Louisiana State Univ

Constantine Georg
JD, Tulane University

Robert Glass
JD, University of Pennsy

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Sinha
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I A. Solomon
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Kirsten Engel

Roslyn Taylor
JD, Tulane University

Peter M. Thomson
JD, Tulane University

The Honorable Max Tobias
JD, Tulane University

Campbell E. Wallace
JD, Tulane University

Irving Warshauer
JD, Tulane University

Stephen L. Williamson
JD, Louisiana State University

Robert Winn
JD, Loyola University (La.)

JUDICIAL EXTERNSHIP FACULTY

United States District Court Judges

The Honorable Morey Leonard Sear
Director, Judicial Externship Program
JD, Tulane University

The Honorable Ginger Berrigan
JD, Louisiana State University

The Honorable Edith Brown Clement
JD, Tulane University

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The Honorable Max Tobias
JD, Tulane University

Campbell E. Wallace
JD, Tulane University

Stephen L. Williamson
JD, Louisiana State University

Robert Winn
JD, Loyola University (La.)

JUDICIAL EXTERNSHIP FACULTY

United States District Court Judges

The Honorable Morey Leonard Sear
Director, Judicial Externship Program
JD, Tulane University

The Honorable Ginger Berrigan
JD, Louisiana State University

The Honorable Edith Brown Clement
JD, Tulane University

The Honorable Stanwood R. Duval, Jr.
JD, Louisiana State University

The Honorable El
JD, Tulane University

The Honorable M
Feldman
LLB, Tulane Universit

The Honorable M
Lemmon
JD, Loyola University

The Honorable H
Mentz Jr.
LLB, Louisiana State U

The Honorable G.
Porteous
JD, Louisiana State Un

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The Honorable Al
JD, Tulane University

The Honorable Rc
Fonseca
JD, Loyola University

The Honorable Iv
Lemelle
JD, Loyola University

The Honorable Jo
Wilkinson, Jr.
JD, Tulane University

Bruce Whittaker
JD, Tulane University

Stephen L. Williamson
JD, Louisiana State University

Robert Winn
JD, Loyola University (La.)

JUDICIAL EXTERNSHIP FACULTY

United States District Court Judges

The Honorable Morey Leonard Sear
Field Supervisor
JD, Tulane University

The Honorable Ginger Berrigan
JD, Louisiana State University

The Honorable Edith Brown Clement
JD, Tulane University

The Honorable Eldon E. Fallon
JD, Tulane University

The Honorable Martin L. C. Feldman
LLB, Tulane University

The Honorable Ivan L.R. Lemelle
JD, Loyola University (La.)

The Honorable Mar Lemmon
JD, Loyola University (La

The Honorable Henı Mentz Jr.
LLB, Louisiana State Univ

The Honorable G. Tl Porteous
JD, Louisiana State Unive

The Honorable Sara
JD, Tulane University

United States Mag

The Honorable Lanc
JD, University of North C

The Honorable Almı
JD, Tulane University

The Honorable Ronı Fonseca
JD, Loyola University (La

The Honorable Loui
JD, Loyola University (La

The Honorable Jose Wilkinson, Jr.
JD, Tulane University

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MINUTE ENTRY
BERRIGAN, J.
NOVEMBER 23, 1998

DR. CARL BERNOFSKY	CIVIL ACTION
VERSUS	NO. 98-1792 c/w 98-2102
ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND	SECTION "C"

IT IS ORDERED that the plaintiff's motion for recusal is hereby DENIED. For the record, the undersigned's only teaching undertaking at Tulane University School of Law involved volunteer substitute teaching a few classes for Judge Charles Schwartz, Jr., which involved no compensation. In addition, the Amistad Research Center is a distinct corporate entity which is located on Tulane's campus. In any event, membership on the Amistad's Board of Directors ended several years ago. There is no basis for the plaintiff's suggestion that the undersigned's impartiality might reasonably be questioned by virtue of these two circumstances under 28 U.S.C. § 455.

s/ *Ginger Berrigan*

Federal Practice & Procedure: Appeals Seminar

This course covers the Federal Rules of Appellate Procedure and their application in litigation before the federal courts. Topics include, but are not limited to, post-trial motions preparatory to appeal, perfecting an appeal, appeals from interlocutory orders, and US Supreme Court practice. This course is a component of the Appellate Advocacy Clinic and must be taken by students enrolled in that clinic. It is also open to students not enrolled in the Appellate Advocacy Clinic. This course is limited to 20 students. 3 credits. Mr. Allbritton.

Federal Practice & Procedure: Trials

This course covers the Federal Rules of Civil Procedure and their application in litigation before the federal courts. 2 credits. Judge Schwartz, Chief Judge Sear, and Magistrate Wilkinson.

Feminist Legal Theory

The course will present an overview of feminist legal theories, including radical, cultural, postmodern, and critical race aspects of feminist legal thought. We will also examine the application of feminist theories to specific areas of law, e.g., contract law, property law, and international law. 3 credits. Ms. O'Neill. Not offered 1998-99.

Financial Institutions

This course covers the law of banking, financial institutions, and capital markets. Monetary growth, Federal Reserve policies, deposit insurance, chartering, branches, electronic funds transfer, mergers, and holding companies are given major emphasis. A brief survey of contrasting regulation of savings institutions, insurance companies, mutual funds, pension funds, investment banking, and the stock markets is provided. Problems of discrimination, capital formation, inflation, deregulation, and regulatory reform are also considered. Students may take an examination for the whole grade or write a paper for part of the grade. 3 credits. Mr. Lovett.

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Course description of "*Federal Practice & Procedure: Trials*," offered in sections, including the one taught by Judge Charles Schwarz, excerpted from the *Tulane Law School Catalog for 1998-2000*, p. 55.

Exhibit 8

Judge Berrigan's curriculum vitae for 1995, showing her continuing board membership on Tulane's Amistad Research Center, excerpted from the *Almanac of the Federal Judiciary, 1995*, Vol. 1, 5th Circuit, p. 3.

Education Univ. of Wisconsin, B.A., 1969; American Univ., M.A., 1971; Louisiana State Univ., J.D. 1977

Private Practice Gravel Brady & Berrigan, New Orleans, 1978-94

Government Positions Staff Attorney, Governor's Pardon, Parole and Rehabilitation Commission, 1977-78; Law Clerk, Louisiana Department of Corrections, 1975-77; Legislative Aide Senator Joseph E. Biden, 1972-73; Staff Researcher, Senator Harold E. Hughes, 1971-72

Public Office Member, Louisiana Sentencing Commission, 1987-1994

Other Employment Assistant to Charles Evers, Mayor of Fayette, Miss., 1973-74; Graduate Assistant, Department of Communications, American Univ., 1971; Administrative Secretary, Boston College; Staff Assistant, Univ. of Wisconsin

Professional Associations Louisiana State Bar Assn., 1977- present; Bar Assn., Federal Fifth Circuit, 1986-present; Louisiana Assn. of Criminal Defense Lawyers, 1985-1994; New Orleans Assn. for Women Attorneys, 1987-1994; Louisiana Capital Defense Project, 1986-88

Other Activities Committee of 21, 1989-1993; American Civil Liberties Union of Louisiana, 1989-1993; Forum For Equality, 1990-1994; Amistad Research Center, Tulane Univ., 1990-present

Lawyers' Evaluation Lawyers with a limited number of appearances before Berrigan since her 1994 appointment are very impressed with her ability and willingness to work hard. "She is always well-prepared." "She is very bright and very thorough." "In terms of ability, she's the best." "She's very bright and very hard-working." "Her legal ability is excellent." "She has a brilliant legal mind." "She is very involved in the legal aspects of the case. She reads the briefs and the cases—the authorities, and is very prepared." "She's very good."

Litigators familiar with Berrigan said she is extremely cordial to lawyers. "She is the nicest judge to members of the bar. She has juice and coffee and donuts." "She's very cordial." "She is very courteous." "She talks to defendants—she is very cordial, she will greet them and wish them good luck." "She is the most pleasant judge. She is very lawyer-friendly." "She's extremely friendly to members of the bar. She makes you feel at home in her courtroom and chambers."

Berrigan keeps control of her courtroom, but lets attorneys present their cases, according to those familiar with her. "She takes her time to listen to everyone and

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District Judge; Louisiana, Eastern
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Fax: (504) 589-2643
Born 1948; appointed in 1994 by President Clinton

Education Univ. of Wisconsin, B.A., 1969; American Univ., M.A., 1971; Louisiana State Univ., J.D. 1977

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Media Coverage 1996: Berrigan was assigned to oversee a class-action lawsuit against the nation's largest tobacco companies. Berrigan replaced Okla B. Jones 2d, who died in January of leukemia. Berrigan's appointment to the case had no immediate effect because the class-action status was before a Federal appeals court in New Orleans at the time of Jones' death. Berrigan said of her assignment, "This is certainly a challenge, and I expect to work very hard." New York Times, January 18, 1996

Lawyers' Evaluation Lawyers with a limited number of appearances before Berrigan since her 1994 appointment are very impressed with her ability and willingness to work hard. "She is always well-prepared." "She is very bright

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Helen Ginger Berrigan

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Helen Ginger Berrigan

District Judge; Louisiana, Eastern
500 Camp Street
Room 556
New Orleans, LA 70130
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Other Activities Committee of 21, 1989-93; American Civil Liberties Union of Louisiana, 1989-93; Forum For Equality, 1990-94; Amistad Research Center, Tulane Univ., 1990-94

Noteworthy Rulings 1996: Berrigan presided over a double death penalty case involving a New Orleans police officer accused of hiring a drug dealing friend to kill a woman who had filed a police brutality complaint agianst him. It was the first trial in the country for civil rights violation capital murder since Congress broadened the federal death penalty jurisdiction in 1994. Both defendants

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LLERY *324 Picayune Place nes streets), 522-6906 —* photography and primitive jew-

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813 Royal St., 528-3094 —

Magazine St., 899-6485 — Louisiana artists, featuring pot- e.

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museums

ARSENAL *Adjacent to the Cabildo, Jackson Square, 568-6968 — Louisiana and the Mighty Mississippi*, permanent installation featuring ship models, paintings, photographs, navigational devices and rare artifacts from famous vessels.

CABILDO *Jackson Square, 568-6990 — National Council of Jewish Women Celebrates a Centennial of Service to New Orleans*, exhibition of photographs, documents and memorabilia chronicling the Council's history of community service, through March 1999.

CANNES BRULEE NATIVE AMERICAN CENTER *Louisiana Wildlife and Fisheries Museum, 303 Williams Blvd., Kenner's Rivertown District, 468-7232 —* Guided tours and presentations given by members of Native American tribes.

GALLIER HOUSE *1118-1132 Royal St., 523-6722 —* Victorian interiors, detailed courtyard and slave quarters adorn the restored 1857 townhouse of New Orleans architect James Gallier Jr.

GERMAINE CAZENAVE WELLS MARDI GRAS MUSEUM *Arnaud's Restaurant, Second Floor, 813 Bienville St., 523-5433 —* Carnival costumes, vintage photographs and memorabilia of Carnival celebrations from 1937 through 1968.

HERMANN-GRIMA HOUSE *820 St. Louis St., 525-5661 —* Accurate depictions of Creole life prior to the Civil War in this 1831 home, including a private stable, courtyards and a working kitchen.

HISTORIC NEW ORLEANS COLLECTION *533 Royal St., 523-4662 — Made In America: Bill Russell's World of Jazz*, Russell's collection of manuscripts, books, sound recordings, artifacts and photographs documenting the development of jazz, through Oct. 31.

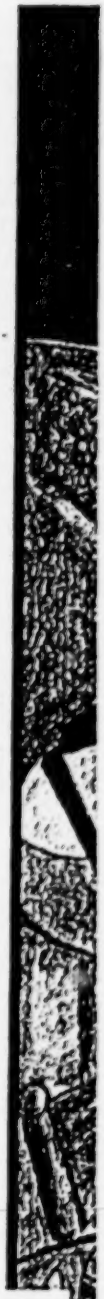
LOUISIANA CHILDREN'S MUSEUM *420 Julia St., 523 1357 — What Will It Take To Save Our Lake*, interactive multimedia exhibition addressing environmental protection of Lake Pontchartrain.

NEW ORLEANS MUSEUM OF ART *1 Collins Diboll Circle, City Park, 488-2631 — Visions and Voices: Native American Painting From the Philbrook Museum of Art, Singing the Clay: Pueblo Pottery of the Southwest Yesterday and Today, Picasso Ceramics From New Orleans Collections*, through August 2. *Echoes in the Silence*, drawings by Benjamin Levy, through Aug. 15. *Buson and Taiga: Masters of Japanese Literati Painting*, through Aug. 30.

OLD U.S. MINT *400 Esplanade Ave., 568-6990 — New Orleans Jazz*, photographs illustrating the city's music traditions by John McCusker, Syndey Byrd, Terri Mims, Michael Smith and others. Permanent exhibition of Mardi Gras memorabilia from around the state.

PITOT HOUSE *140 Moss St., 482-0312 —* Eighteenth century French Colonial/West Indies home furnished with antiques from the 1800s.

PRESBYTERE *Jackson Square, 568-6968 — Cities of the*



TULANE UNIVERSITY AMISTAD RESEARCH CENTER *Tilton Hall, 865-5535 —* Graphic pieces by William H. Johnson; sculpture by Richmond Barthe, William Artis and Gregory Ridley, through July.

Tucker And Associates Inc
616 Girod 70130 — 522-4627
Tucker Designs Ltd — 464-7479
Tucker Engineering
2517 Bay Vista Dr Biloxi Ms 39531 — 228 388-5451
Tucker Garrett R III MD MPH
1111 Medical Center Blvd — 349-6363
Tucker Heather cosmetologist — 738-0098
Tucker James W
700 N 10th St Baton Rouge La 70802 — 225 344-2098
Tucker Joseph H 7920 Spruce St 70118 — 862-9002
Tucker L J 5947 Brighton Pl 70131 — 392-7888
Tucker Richard A Dr
880 Behrman Hwy Terrytown 70056 — 394-0001
Tucker Thomas W atty 1100 Tulane Av 70112 — 525-3030
Tucker & West Attorneys At Law
1100 Tulane Av 70112 — 525-3030
Tucker's Camera Centers
1507 Gause Blvd Slidell 70458 — 641-7107
Tucker's Food Store 1200 Belleville St 70114 — 363-0074
Tucker's Grocery Store 633 George — 436-1855
Tuesday Morning Incorporated
601 Terry Pkwy Terrytown 70056 — 367-9217
Tuesday Morning Inc gifts
6601 Veterans Memorial Blvd Metairie 70003 — 454-2949
Tuff-N-Nuff 2800 Manhattan Blvd Harvey 70058 — 362-2090
TUFTON PETER M DR dntst
654 Terry Pkwy Terrytown 70056 — 362-5270
Tufts Frederick J 701 Poydras St 70139 — 581-9327
Tufts J David III 701 Poydras 70139 — 581-9327
Res 1316 Joy 70122 — 288-2187
Tufts Robert G rl est devlpr 701 Poydras 70139 — 581-9327
Tujague's Restaurant 823 Decatur St 70116 — 525-8676
TuJay's 2101 Paris Rd New Orlns 70129 — 277-8054
Tujays Carpet Cleaning Service — 467-2878
Tujays Carpet & Upholstery Cleaning — 368-2878
Tujays Janitorial Service
1821 Commercial Dr Harvey 70058 —
Tukandu Inc 1928 Canal St 70112 —
Tulane Auto Sales Inc
4001 Tulane Av 70119 —
TULANE AVE ADULT BOOKS & VIDEOS—
3819 TULANE AV 70119 — 4
5400 Crowder Blvd 70127 — 242-3866
438 Bourbon St 70130 — 522-9588
Tulane Avenue Law Center
2715 Tulane Av 70119 — 822-4488
Tulane Avenue Law Center Of Stein Meyer & Associates
2715 Tulane Av 70119 — 822-4488
Tulane Baptist Student Center
7107 Freret 70118 — 861-0692
Tulane Campus Affiliate Program
2430 Washington Av 70113 — 895-4777
Tulane Catholic Center 1037 Audubon — 866-0984
Tulane Comprehensive Cancer Center 150 S Liberty St 70112 — 588-5800
Tulane Dental Care 4041 Tulane Av 70119 — 486-4756
Tulane Fleet Inc
8400 River Rd Waggaman 70094 — 431-1488
Tulane Fleet Inc
8400 River Rd Waggaman 70094 — 431-5600
Tulane HomeCare Program
220 Loyola Av 70112 — 587-2190
Tulane Hospital For Children
1415 Tulane Av 70112 — 588-5263
Tulane Housing 2600 Calhoun St 70118 — 866-1960
Tulane Housing 2808 Calhoun St 70118 — 866-0173
Tulane Housing 6301 Freret St 70118 — 862-9541
Tulane Housing 7029 Freret St 70118 — 866-5738
TULANE INDUSTRIAL LAUNDRY INC
2606 St Louis 70119 — 822-4411
Tulane Institute Of Sports Medicine
202 McAlister Extension — 864-1476
Tulane Medical Center
See Tulane University Medical Center
TULANE MEMORIAL BAPTIST CHURCH—
3433 Tulane Av 70119 — 488-0830
Tulane Shell 3327 Tulane Av 70119 — 827-5742
Tulane Shirts Manufacturing Inc
234 Harbor Cr 70126 — 243-2301

TULANE UNIVERSITY—

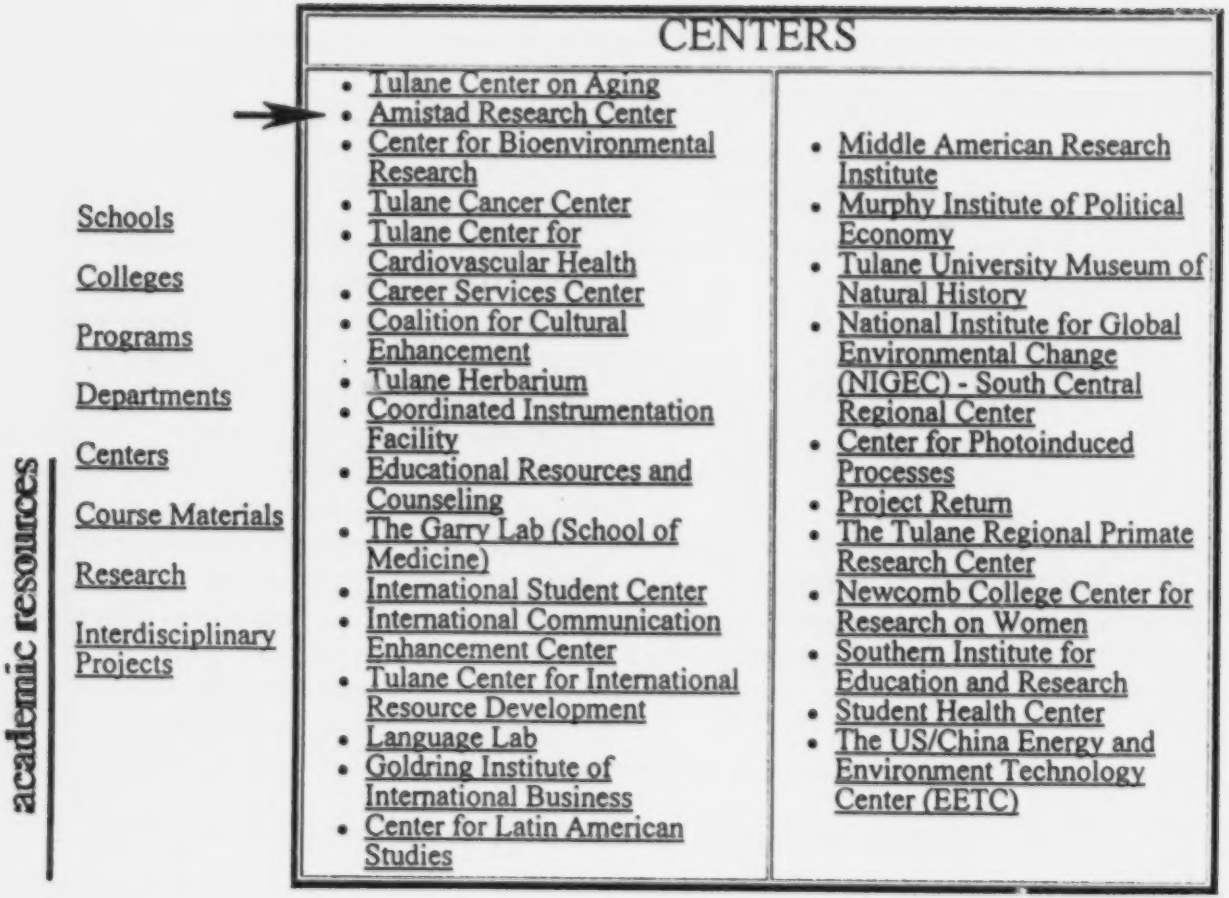
6823 St Charles Avenue 70118 — 865-5000
Student Directory Information — 865-4000
Accounting—
Accounts Payable — 865-5371
Accounts Receivable — 865-5368
Purchase Order Invoice Processing — 865-5824
ADIS
See Alumni & Developement Information Services
ADST
See African Diaspora Studies At Tulane
Admissions Undergraduate Division — 865-5731
Admissions Graduate & Professional—
Graduate — 865-5100
Business School — 865-5410
Law — 865-5930
Medicine — 588-5187
Social Work — 865-5314
Affirmative Action-Office Of Equal Opportunity—
Medical Center — 587-7617
Uptown — 865-5280
African Diaspora Studies At Tulane — 862-3550
Air Force ROTC — [illegible]
Amistad Research Center — 865-5535
[illegible] — [illegible]
Architecture Library — 865-5391
Army ROTC — 865-5594
Art/Newcomb — 865-5327
Art/Newcomb Galleries Curator — 865-5128
Associated Student Body/ASB — 865-5111
Astronomy — 865-5520
Athletics—
Athletic Director — 865-5500
Baseball — 862-8239
Business Office — 865-5501
Equipment Room — 865-5510
Football — 865-5355
Green Wave Athletic Assoc — 865-5356
Marketing & Promotions — 865-5625
Men's Basketball — 865-5505
Men's Golf — 865-5507
Men's Tennis — 862-8237
Sports Information — 865-5506
Student Services — 865-5571
Ticket Office/Sports Shop — 861-9283
Track — 865-5514
Training Room — 865-5511
Volleyball — 865-5570
Weight Room — 865-5671
Women's Basketball — 865-5672
Women's Golf — 865-5513
Women's Soccer — 865-5569
Women's Tennis — 865-5503
Band Director — 865-5139
Barber Shop — 865-5650
Bioenvironmental Research—
Center For — 862-8370
Administrative Office — 585-6910
Biology — See CMB & EEOB
Board Of Admnistrators — 865-5738
Bookstore — 865-5913

Exhibit 13

Tulane's public listing of the Amistad Research Center as a Tulane subsidiary, excerpted from the *Greater New Orleans White Pages, Business Section, 1998-99*, p. 283.

Exhibit 14

The Amistad Research Center as one of many Tulane Centers, excerpted January, 1999 from Tulane's Web site, *Tulane Academic Resources - Centers.*


academic resources
Schools
Colleges
Programs
Departments
Centers
Course Materials
Research
Interdisciplinary Projects
CENTERS
Tulane Center on Aging
Amistad Research Center
Center for Bioenvironmental Research
Tulane Cancer Center
Tulane Center for Cardiovascular Health
Career Services Center
Coalition for Cultural Enhancement
Tulane Herbarium
Coordinated Instrumentation Facility
Educational Resources and Counseling
The Garry Lab (School of Medicine)
International Student Center
International Communication Enhancement Center
Tulane Center for International Resource Development
Language Lab
Goldring Institute of International Business
Center for Latin American Studies
Middle American Research Institute
Murphy Institute of Political Economy
Tulane University Museum of Natural History
National Institute for Global Environmental Change (NIGEC) - South Central Regional Center
Center for Photoinduced Processes
Project Return
The Tulane Regional Primate Research Center
Newcomb College Center for Research on Women
Southern Institute for Education and Research
Student Health Center
The US/China Energy and Environment Technology Center (EETC)

Amistad Research Center Staff

Shannon Burrel -Archives Clerk	
Donald E. Devore, Ph.D. -Executive Director	ddevore@mailhost.tcs.tulane.edu
Rebecca Hankins -Archivist	hankins@mailhost.tcs.tulane.edu
Venola Jones -Cataloging Librarian	
Beatrice R. Owsley -Archivist	
Regina Perry, Ph.D. -Senior Art Curator	
Mark Phillips -Archives Clerk	
Alvery Rodney -Comptroller/Administrative Assistant	alvery@mailhost.tcs.tulane.edu
Brenda Billips Square -Head of Archives and Library	square@maihost.tcs.tulane.edu

Exhibit 15

Listing of Amistad Research Center Staff,
taken January, 1999 from Tulane's Web site,
Amistad Research Center Home Page - Staff.

Exhibit 16

Listing of Donald Devore, Executive Director of Amistad Research Center, in Tulane's Online *X.500 Directory for Faculty and Staff*, taken January, 1999 from Tulane's Web site.

Move upwards to

- The World
- United States of America
- Tulane University
- Faculty and Staff
- Amistad Research Ctr

Found match on **exact**

Donald P Devore

cn
Donald P Devore
Donald Devore
mail
ddevore@mailhost.tcs.tulane.edu
title
Executive Director
description
Amistad Research Ctr
telephonenumber
+1 504 862-3225

See all attributes

Move upwards to

- The World
- United States of America
- Tulane University
- Faculty and Staff
- Amistad Research Ctr

Found match on **exact**

Alvery Rodney

cn
Alvery Rodney
Alvery Rodney
mail
arodney@mailhost.tcs.tulane.edu
title
Controller
description
Amistad Research Ctr
telephonenumber
+1 504 862-3220

See all attributes

Exhibit 17

Listing of Alvery Rodney, Comptroller of Amistad Research Center, in Tulane's Online *X.500 Directory for Faculty and Staff*, taken January, 1999 from Tulane's Web site.